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STATE OF NEW YORK

MINUTES AND TESTIMONY

OF THE

Joint Legislative Committee

Appointed to Investigate the

Public Service Commissions

(Authorized by Joint Resolution of January 21, 1915, and continued by Joint Resolution of April 24, 1915; further continued by Joint Resolution January 20, 1916 and March 6, 1916)

VOLUME II

TRANSMITTED TO THE LEGISLATURE MARCH 30, 1916

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1916

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JOINT COMMITTEE OF THE LEGISLATURE

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HON. JAMES A. TOWNER,
HON. CHARLES J. HEWITT,
HON JAMES A. FOLEY,

FROM THE ASSEMBLY

HON. J. LESLIE KINCAID,
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Secretary
HON. WILLIAM C. BAXTER,
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HON. CHARLES D. DONOHUE,

COUNSEL TO THE COMMITTEE

HON. MERTON E. LEWIS,
Deputy Attorney-General

Committee organized at the Hotel Biltmore, New York, on June 24, 1915.

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TESTIMONY

NOVEMBER 22, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee met at 11 A. M., pursuant to adjournment.

Chairman Thompson.— The Committee will come to order. The Committee has prepared an answer to the request of Judge McCall, made of the Governor, to which our attention was called by correspondence from the Governor last Friday, I think it was, and the copy of our reply will be extended into the record, and the Committee will and has now prepared to forward to the Governor the information suggested, and a duplicate which the Governor can transmit to Judge McCall, if in the judgment of the Governor that course should be pursued. Now, the newspaper people — if you like the stenographer has some copies of these things, and you may have them if you like. Now, in relation to one of these matters, I make a personal statement, a very short one. That is in relation to the eleventh proposition referring to the automobile. Now, the only reason why I make the statement is because this matter came up last spring. I simply want to state my personal position, and that is this: That in my judgment the use of an automobile owned by the Public Service Commission is a matter more or less in the discretion of the Public Service Commissioner who has charge of the car. I can see how the use of a machine for apparently private purposes at times is perfectly proper, but the particular conditions which have appeared on our record in relation to the use of this particular car by Chairman McCall amounts in my opinion to an abuse of discretion, and to such an abuse of discretion as amounts to misconduct, and that is the reason why this is certified.

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COMMISSIONER HAYWARD on the stand.

Examination by Mr. Lewis:

Q. Commissioner Hayward, were you familiar with proceedings which resulted in an order for the making of repairs issued by the Commission and directed to Brooklyn, Queens County and Suburban Company? A. Was that the —

Q. Just look at the document and see if that refreshes your recollection? A. I do not remember the number of the case, but I remember the proceedings that occurred after I came on the Commission.

Q. State what took place, if you will,— is that the name of the company, Brooklyn, Queens County and Suburban? A. I will look and see. I don't know. As I recall it, there were six or seven subsidiaries of the B. R. T. of which the Brooklyn, Queens County and Suburban was one. Here it is, the Brooklyn Heights Railroad Company, the Nassau Electric Railroad Company, the South Brooklyn Railroad Company, the New York Consolidated Railroad Company, and the Coney Island and Gravesend Railway Company, and then there was one other company which, as I now recall it, was acquired afterward in behalf of which company an application for an extension of time was made subsequent to this one — this application, and all I knew about it was that this application came along March 18th, I see from your record, the railroads applied for an extension of time and it came before the Commission for the vote on April 27th apparently, and as I recall it there was attached the recommendation of Mr. Wilder, the electrical engineer of the Commission. I see you have it here in your record, if you want me to read. I could not give it from memory.

Q. The substance of it was that Commissioner Wilder recommended — A. Yes, on account of the shop facilities of the company had been so crowded and they had completed a very large number of cars called for by the order.

Q. And what was the attitude of the Commission on the proposition as submitted — from the recommendation of Engineer Wilder? A. It came up — I see from the transcript here I asked what Mr. Wilder said about it, and his report was read, and I asked if they had made an adequate excuse and how long ago the order was made. Mr. Whitney said it was made in October, 1911,

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and then it went into the courts and on July 19, 1913, the writ of certiorari was dismissed by the Appellate Division.

Q. That in effect was a denial of any relief by the courts from the order? A. Yes. That made the order operative, I take it, then.

Q. Well, when did that denial occur? A. July 19, 1913, although the order had been originally made in 1911, so I asked when they first began to say they could not obey the order after the courts had passed on it, and Mr. Whitney said the Commission on July 24th extended the time to July 1, 1914, to comply with paragraphs one and three, and to June 1, 1915, to comply with paragraph two. On March 8, 1915, they again applied and I then stated in my opinion — I have it here —

> " They have not shown the slightest evidence of good faith. Here they fight you to the courts for years and then when they get an order to do it, they wait until the time is up, and say, If you do not give it to us, the extension, they are in default. Whose fault is it if they are in default then? Mr. Whitney.— The 1st of July they will have 1,459 cars ready. Chairman McCall.— If you do not grant the extension you have an order which you can rake them up on violation, which you cannot do according to your own electrical engineer's report. Commissioner Hayward.— You cannot do it now. I mean when the thing was started. Chairman McCall.— Since that time they started and since that time they have 1,459 cars equipped. Call the roll on the question of the adoption of the recommendation of the electrical engineer. The following vote was thereupon taken: Ayes, Chairman McCall, Commissioners Cram, Williams, Wood. Noes, Commissioner Hayward. The extension order adopted."

I have read from a transcript which you have handed me.

Mr. Lewis.— I offer the transcript in evidence, extract of proceedings of Commission in case 1369, on July 7, 1911, and subsequent dates.

(Received.)

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Q. Now, on Friday, the Third Avenue, Manhattanville & St. Nicholas Avenue orders were under consideration by the Commission? A. Yes. Third Avenue and 42nd Street, Manhattanville & St. Nicholas Avenue, two roads.

Q. Was there a report from Engineer Wilder on the subject of the failure of these companies to complete the repairs in accordance with the orders made? A. Yes, sir.

Q. What was Mr. Wilder's report in that case? A. Well the time for the October 1st repairs had been previously extended, and Mr. Wilder was reporting on the part of the order which required certain work to be done by November 1st. In his report to the Commission, predicated on an examination made November 12th, I believe was that a large part of the work directed to be done had not been done.

Q. Did he make any recommendation as to what action if any should be taken? A. Did he, did you say?

Q. Yes,— Wilder. A. I don't know that he did, except to report to the Commission that the work had not been done under the order. It is not customary for him —

Q. What action was taken by the Commission on the report of Engineer Wilder? A. Well, you hand me transcript of the extension of the minutes for that.

Q. I say you can refresh your recollection from that if you wish. A. "Case 1893, Commissioner Wood moved that it be referred to counsel, and Commissioner Williams stated according to Mr. Wilder, he being the electrical engineer, there is work which they have been ordered to do, which has not been done, stated that he agreed with Commissioner Wood." Commissioner McCall said, "What have you done, refused extension?" Commissioner Wood said, "There is no application before us." I may state the Chairman was down here before this Committee the week before when the action was taken. I stated the application for an extension to November 15, 1915, for a fifteen days' extension and the Commission on November 16th refused to grant the extension to November 15th. I stated, "The work was not done yet." Commissioner Williams.— "Yes, and there has been no application for a further extension of time."

Q. Well, now, just the substance of what action was taken upon the proposition to refer the matter to counsel with instructions to

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prosecute for violation of the order. A. Well, Commissioner Williams stated that it did not seem that there had been a substantial compliance with the order, and then the motion was — then there was a colloquy occurred and the Chairman expressed his opinion of it, and then I said that they had the report of the electrical engineer, and asked whether they wanted to stand on it or not, and other facts. And then I moved as a substitute that instead of asking the counsel for an opinion, that we direct the counsel to proceed under the law to enforce the order of the Commission, but stated that I made my substitute motion predicating it on the statement of the engineer of the Commission in which he said that there had not been a compliance with the order in so many words in his report. Then the Chairman stated, " Just see the attitude Commissioner Hayward is trying to put this Commission in. I pass no comment on it, but look at the result of the motion. Because an electrical engineer reports to this Commission that some work required by the order was not done, he moves that counsel take proceedings for any civil remedy or for a remedy which is vouchsafed by the statute to punish them, without any legal search of the record to find whether or not there is a case against them, though admitting the fact that the work is not done. There might have been a legal justification, or the facts do not warrant the action. What man with common sense will vote for such a resolution as that? Is there any reason why we should not be told whether or not in the advice of counsel this record is sufficient to go to court, and not simply on the report of an electrical engineer that some work is not done? "

Q. Is that the same electrical engineer on whose report an extension was granted in the Brooklyn Rapid Transit and subsidiary companies? A. Yes, sir. That is Mr. Wilder, the electrical engineer for the Commission.

Q. Well, briefly, was your motion adopted, for instructing the counsel to prosecute for the violations? A. No. The Chairman said, " You gentlemen do as you please, I won't vote on the question of the electrical engineer's report. The mere fact the work is not done should not be ground for this Commission going into court." Now my motion was not seconded. So then Commissioner Wood's motion that it be referred to counsel for report was

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put and carried, and I voted no. The others voted aye, Commissioner Cram being absent. I voted no, and explained why I voted no. Because I thought the other action ought to be taken.

Q. Is Commissioner Cram at the office to-day? A. I can't say.

Mr. Lewis.— I offer this transcript in evidence, also.

(Received.)

A. I may say Mr. Cram's office is clear at the far end of the place from mine, and I would not see him if he was there unless I had business with him.

Chairman Thompson.— Did Commissioner McCall like the electrical engineer's report when it extended the time of the company and did not when it did not?

Mr. Hayward.— I think the transcripts speak for themselves. I'd rather not express any opinion about it. I did Friday, and it is not always an easy situation to pass an opinion on one's colleague.

Chairman Thompson.— Mr. Cole has just spoken to me in reference to the Kings County Lighting Company which he represents. You have, I understand, issued a subpoena.

Mr. Lewis.— Issued a subpoena for men who knew about the oil contracts, or were supposed to know. I have not been able to find him, but a subpoena was issued and served upon an employee of the office instructing him to produce the original contract for the purchase of oil for use of manufacturing of gas by the Kings County Light and Power Company, beginning January 1, 1910, and years subsequent thereto. That subpoena has been served. I don't know whether the man on whom it was served is here.

Mr. Cole.— The man is here, but he is simply a typewriter in the office of the treasurer of the company, and that office embraces a lot of activities besides that of the Kings County Lighting Company. There are two men who are thoroughly familiar with the details of this oil contract. One is our secretary who returned to Japan about six or eight weeks.

Chairman Thompson.— What is his name?

Mr. Cole.— William M. Fluke, and he is likely to be in Japan until the end of January in connection with oil and gas in which

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his employers are interested. The other man is the engineer having an office in New York and Chicago, and he has acted as sort of chief supervising engineer for the company. I suppose he is the man who made the contract on behalf of the company. I tried to get in touch with him this morning. He is expected to return from Indianapolis to Chicago some time to-day, and if he doesn't they will send for him and we anticipate he will be here Wednesday, and as soon as he arrives from Chicago we will produce him if the Committee want.

Q. What is his name? A. Giles W. Mead, of the firm of Williamson & Mead.

Q. And will you produce at that time, Mr. Cole, original contract of the purchase of oil used in the manufacture of gas covering the period mentioned in the subpoena? A. Yes. I would like to make this request at this time, that this is a matter of serious consequence, as this Committee appears to be trying a rate case, and as the question of law is an important part of that matter, we would like the Committee to extend us the courtesy of asking Mr. Mead a few questions if we find it proper or necessary to get all the facts before the Committee.

Chairman Thompson.— You can bring that up Wednesday.

(The Committee at this time adjourned to November 23, 1915, at 11 o'clock A. M., at the same place.)

Chairman Thompson.— I want to reconsider the adjournment of this Committee until to-morrow morning, and instead I want to make a recess until 3 o'clock. Not that there is anything sure that there will be anything at 3 o'clock, but I have reasons which I cannot state, and concerning which I desire to consult with counsel in the meantime, and I will consult with counsel with reference to whether we shall have anything at 3 o'clock, and we will accordingly take a recess until 3 o'clock this afternoon.

AFTER RECESS

The Committee met at 3 P. M., pursuant to recess.

The Chairman.— The Committee having met pursuant to recess, adjournment was taken until Tuesday, November 23, at 11 A. M.

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NOVEMBER 23, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Meeting of the Committee at 11 A. M., pursuant to adjournment.

Senator Towner in the Chair.

Chairman Towner.— The Committee will please come to order.

Mr. Lewis.— I have asked Commissioner Williams to come in, because I wanted to have him identify some exhibits that were used in the Kings County Lighting Company case, and while we are waiting for him, if agreeable I will offer in evidence for the purpose of having it spread upon the record, the decision of Judge Pierce of the Supreme Judicial Court of the State of Massachusetts, upon the application made by direction of this Committee by its Chairman for an order to compel the attendance of Charles E. Cotting of Boston, the executor of the estate of Gardiner M. Lane, and to compel him to produce certain written documents desired by the Committee, in connection with its investigation of the certificate awarded, issued by the Public Service Commission to the Manhattan Railway Company, and as the decision is not a lengthy one. I will read it into the record, in order that it may be perpetuated:

COMMONWEALTH OF MASSACHUSETTS,
SUPREME JUDICIAL COURT,
SUFFOLK, } *ss.*

GEORGE F. THOMPSON, *Petitioner,*
Chairman of the Joint Committee of the Legislature of the State of New York,
against
CHARLES E. COTTING, *Respondent.*

MEMORANDUM

This court is without power to compel the attendance of witnesses and the giving of testimony before other tribunals

except in response to letters rogatory, or upon the authority conferred upon it by R. L. C. 175, paragraphs 10 and 11. That statute looks to the action of this court upon the application of a tribunal which is authorized to examine but not to compel the attendance of witnesses or of a magistrate or tribunal which is authorized to examine and compel the attendance of witnesses. The petitioner is not a magistrate, and as one of the legislative committee it is difficult to see how he can properly be called or be in fact a tribunal within the meaning of the statute. However, as this ruling would simply require an amendment to the petition, the question at issue is considered on the broader grounds of whether the legislative committee of the State of New York is such a tribunal. The statutes of this Commonwealth have conferred upon many officers and bodies the power to examine witnesses, to administer oaths and to compel attendance before them. But the description of such tribunals is found in specific grants. For example, statutes of 1863, 158, gave such power to municipal authorities. 1882, chapter 267, police commissioners. 1885, chapter 323, to the Board of Police. 1900, to registers of voters. 1895, to the Bureau of Statistics of Labor. Rev. L. C. Chapter 90, paragraph 8, to cattle commissioners. Rev. L. C. Chapter 106, to the Board of Conciliation. 1906, chapter 433, to Highway Commissioners. 1907, chapter 328, to School Committee. 1907, 576, to insurance commissioners. 1908, 222, to savings bank commissioners. Many more instances can be cited, but enough appear to show what is meant by the term, but the term is not applicable to a legislative committee for the reason that each branch of supreme legislature has the undisputed right to examine witnesses and to punish for disobedience of its orders. Citing Whitman's case, 170 M. 118-122. Burnham against Morrissey, 14, 226. It is to be observed that there is no statute or controversy pending in the State of New York, and it is therefore of some doubt whether letters rogatory could be properly issued. See Federal Cases No. 13,202, In Re Letters Rogatory of First District Judge of Vera Cruz, 36 Fed. 306. Morticella, Petitioner, 219 Massachusetts, 58. It would appear that the legislature has not conferred upon

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this court the power which the petitioner requests it to exercise and I am of the opinion that it has not equivalent power. It follows that the petition must be denied.

(Signed) EDWARD P. PIERCE, *J. S. J. C.*

Mr. Lewis.— I think Commissioner Williams will be here in a very few minutes, and I would like to take a recess.

Chairman Towner.— If you like, for a few minutes. Take a recess, if you like, for a few minutes, until the arrival of Mr. Williams.

The Committee will come to order.

STATE OF NEW YORK

EXECUTIVE CHAMBER

ALBANY, *November* 22, 1915.

WILLIAM A. ORR, *Secretary to the Governor.*

HON. GEORGE F. THOMPSON, *Chairman Joint Legislative Committee of the Senate and Assembly for Investigating Public Service Commissions, New York City.*

DEAR SIR.— By direction of the Governor I write to acknowledge the receipt of your letter of November 22d accompanied by "detailed statement of facts" delivered at the Executive Chamber to-day by Mr. John B. Bordwell.

Yours very truly,

(Signed) WM. A. ORR,

Secretary to the Governor.

COMMISSIONER WILLIAMS on the stand.

Examination by Mr. Lewis:

Q. Commissioner Williams, at the time you were considering the application, considering the rate case of the Kings County Lighting Company, you had before you this blueprint or a duplicate of it? A. Well, I remember that,— as I remember it that was introduced in evidence, something of that sort. I either saw this or else I saw it carried out on the stenographer's minutes, or

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else on a slip, but I do not know that I have ever seen a blueprint of it. This is showing the difference in the price of oil paid by this company and other companies, is it?

Q. That is my understanding of it, yes. A. I don't remember that I saw it carried out just this way as to quantity of gallons.

Q. This is entitled in the Kings County case, isn't it? A. Yes. That was not introduced at the time when I was present, but I do remember seeing carried out something like we had the other day, of amounts different companies paid.

Q. It may not have been on a blueprint, perhaps, but this may have been a blueprint of what you saw? A. No, I don't remember that the number of gallons was on that tabulated statement at all, but the price certainly was.

Q. This, you think, was not, then, before you as an exhibit? A. Well, I don't know. I don't remember of seeing that particular blueprint or any blueprint, in fact.

Q. Did you in connection with the opinion which you wrote in the Kings County Lighting Company rate case, 1273, did you investigate to ascertain the price at which the New York and Richmond Gas Company was purchasing oil for the use in the manufacture of gas? A. I don't think I investigated it. I took the statement of our gas engineer to be a fact.

Q. That was Mr. Hine? A. Yes. Whoever it was that prepared the tabulation, whether from Mr. Hine or from Dr. Weber. I don't remember it, but I took that to be the truth.

Q. Did you have any information or evidence before you as to the price paid for oil by the Brooklyn Borough Gas Company? A. No more than the statement of our own staff or our own —

Q. Well, did you have that, the statement from your own staff? A. Whatever appears in that there memorandum, as I said, of those companies that were mentioned, the Consolidated, the Brooklyn Union, and those amounts.

Q. That true of the Queensboro Gas and Electric Company? A. Whatever is on there. I don't remember the names of the companies, or what companies there were. But that was taken as a fact and it was not controverted at all, that they did have those contracts.

Q. Did you ascertain the quantities, the prices at which oil had previously been purchased, that is, previous to the purchases under

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the existing contract? A. I don't remember that I did, excepting that this company formerly purchased oil at a less rate than they are paying now, this Kings County Company. I remember that.

Q. And do you remember at what price it formerly purchased? A. No, I don't remember that.

Q. Do you recall that it was purchasing oil at a price of 4.18 a gallon? A. No, I don't recall what the price was.

Q. Did you have before you any copies of the contracts between the Standard Oil Company of New York and any of the gas companies operating within the Greater City at the time you were making your opinion? A. I don't think so; no. I think there were certain statements from these contracts. Whether they were in the form of tabulations or whether it was verbal. I am sure I never saw the contracts themselves.

Q. I show you a letter addressed to Mr. Hine, Gas Engineer of the Public Service Commission, dated April 7, 1915, reading as follows; written on the stationery of the Brooklyn Borough Gas Company, Surf Avenue, Coney Island, New York: "Dear Mr. Hine, I am enclosing you herewith copy of the oil contract under which we are at the present time operating." Did you have that before you? A. Well, I don't remember whether I had that before me or whether Mr. Hine stated that the contract called for 3.25 cents per gallon.

Q. But the information contained in the contract was conveyed to you, was it? A. Yes.

Mr. Lewis.— I will offer this in evidence. I will read this into the record:

> "Agreement this 17th day of June, A. D., 1914, between the Standard Oil Company of New York, a corporation organized under the laws of the State of New York, party of the first part, and Brooklyn Borough Gas Company, Coney Island, New York, party of the second part, Witnesseth, in consideration of the mutuality hereof, it is hereby agreed between the parties hereto as follows: Party of the first part sells and agrees to deliver to the party of the second part, its successors and assigns the number of gallons of gas oil, 28 to 34 gravity, the second party shall use in the manufacture of gas in its plant during the contract period beginning upon

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expiration of contract dated January 19, 1910, and ending when the full quantity is taken, such supply to be two million gallons. And the party of the second part buys and agrees to receive the same at and for the price of 3.25 per gallon, delivered by bulk boat at the mouth of pipe line leading to the gas company's works at Coney Island, such deliveries to be made as the business of the party of the second part may require. Orders in writing to be duly given of such requirements by said second party. This agreement is understood to cover the liquid gas making material that will be required for use in the plant of the said party of the second part continuously until the full quantity is taken, but total deliveries shall not exceed the quantity above specified, and party of the first part agrees that there will be no unusual or unnecessary detention in the shipment of the oil herein mentioned, and said party shall not be held responsible for delays in the delivery of same because of fires, strikes, accidents or other unavoidable causes. It is agreed between the parties hereto that payment shall be made in cash thirty days after date of invoice, interest at 6 per cent thereafter, funds current in New York. In witness whereof, the parties hereto have executed this agreement the day and date first written herein. It is further understood that in case we are obliged to make deliveries by tank cars, we are to receive an additional margin of one-eighth of a cent per gallon for all such deliveries making the car tank price 3.37½ cents per gallon. Standard Oil Company of New York, by C. M. Higgins, Director. Brooklyn Borough Gas Company, by C. A. Woodhall, General Manager."

A. I never remember of seeing that letter at all.

Q. But you knew of the fact that the price to the Brooklyn Borough Gas was 3¼ cents? A. I knew they were paying 3 — whatever it was — 3¼ I think — that is from either the statement of Mr. Hine or the tabulation read in evidence.

Q. Did you realize that the contract of the Brooklyn Borough Company was made at the time that the contract under which the Kings County Company is obtaining oil is made? A. No, I did not realize that. I supposed they were made at different times, as

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I said the other day. The price was fluctuating. Of course I said the other day, Senator, I did not take any of these hearings at all.

Q. No, I understood you. A. I did not take any of these hearings, I will say now.

Q. But you acted on the record in the preparation of the opinion? A. I tried to. I want to say right now I talked to counsel about it, and I talked with Commissioner Hayward about it, and they were both of the opinion, as I understood it, that we would have to assume that that oil contract was legitimate.

Q. Well, I don't propose to go into it further than necessary to get this on the record. A. Well, I wanted to put that on the record.

Q. I do not object to it at all. A. I did not go through these matters myself carefully at all.

Q. I show you letter from the New York and Richmond Gas Company, dated Stapleton, New York, May 4, 1915, addressed to Mr. Hine. Did you see this record and know of its contents? A. No, I don't think so. I don't think I saw it. As I said, there was that tabulation in with the amounts that each company was paying.

Q. This was a letter between the Gulf Refining Company of Port Arthur, Texas, dated July 1, 1914, and the New York and Richmond Gas Company of Stapleton, Staten Island, providing —

Mr. Lewis.— I will offer it in evidence, to be copied in, perhaps. Providing for the sale of 200,000 gallons of oil for each twelve-month period at 3.325 cents per gallon.

A. No, I don't remember of seeing that.

Q. Inasmuch as it is addressed to Mr. Hine, the gas engineer, it is doubtless a matter of record. A. Whether it was introduced in evidence or whether Mr. Hine had those letters to make up his tabulation from, I can't say. I never saw the letters or the contract.

Q. It was probably used by Mr. Hine in making his tabulation? A. He can tell you that. I shouldn't imagine so. If it was introduced in the record, it ought to have a stamp on somewhere. I mean if it was introduced in the record in this case, our stamp would be on it, but this being a copy it might not be.

(Received.)

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Mr. Lewis.— I also offer in evidence copy of contract dated the 30th day of April, 1914, between the Standard Oil Company of New York and the Queensboro Gas and Electric Company, providing for the sale of three million five hundred thousaud gallons of oil, at four cents per gallon.

(Received.)

The Chairman.— What is the date of that contract, Mr. Lewis?

Mr. Lewis.— April 30, 1914. I offer in evidence copy of letter addressed to Mr. Hine, dated May 5th, on the stationery of the Brooklyn Union Gas Company, signed by J. H. Jordan, President, reading as follows:

> "In compliance with your request over the telephone yesterday, I am enclosing you herewith a copy of our contract for gas oil supply. The contract enclosed is dated June 30, 1914, provides for the delivery of 171 million gallons of oil at a price of 3.0345 cents per gallon, written out reads, three and three hundred and forty-five ten-thousandths cents."

(Received.)

Mr. Lewis.— I offer in evidence letter on the stationery of the Consolidated Gas Company of New York, dated May 4, 1915, addressed to Mr. Hine, and signed by W. R. Addicks, Vice-President, reading as follows:

> "In accordance with your request of this date, I send you herewith a copy of the contract for oil for the period beginning July 1, 1914, and ending December 31, 1916. As provided in the contract, there had been some slight changes on account of car freight rate in Westchester County, but they are unimportant."

(Received.)

Mr. Lewis.— I offer in evidence the agreement dated, referred to in the letter — dated the 1st day of July, 1914, with the Standard Oil Company of New Jersey, and the Consolidated Gas Company of New York, providing for the sale of 275 million gallons

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at a price varying from different points of delivery, but substantially 3.035, perhaps averaging 3.035; that is three and thirty-five thousandths cents per gallon.

(Received.)

A. And the date of that is what?

Q. The date of that contract is July 1, 1914. As I understand your opinion, allowing the 95-cent rate, was based largely upon the high price of oil, the contract now in force with the Kings County Lighting Company, was it not? A. Why, yes, that was a large element in the case.

Q. Do you recall what allowance you made for the cost of the oil that goes into the manufacture of gas? A. It was included in the 32 cents.

Q. But what was the specific allowance for that element of cost? A. Water gas oil — I can tell from the little one how much per thousand feet.

Q. This? A. No.

Q. This? A. Yes. I think perhaps it may be figured out there. Water gas oil 16 cents, and 69 one-hundred-thousandths of a cent per thousand cubic feet.

Q. .1669? A. Yes. That is about half of the .33.

Q. What is the rate at which gas is sold by these other companies contracts of which have gone into evidence, do you know? A. Yes.

Q. Will you state it? A. The Consolidated Gas, 80 cents; Brooklyn Union, 80; Queensboro Gas and Electricity I think are getting $1.15. That is the Far Rockaway company. I can't tell you offhand the New York and Richmond or the Brooklyn Union. I can get it.

Q. Is there any company operating in Brooklyn that gets more than 85 cents? A. In the Borough of Brooklyn?

Q. In the Borough of Brooklyn? A. This Kings County Company.

Q. Other than this? A. I don't think so. My impression is that the Brooklyn Borough — there is some agreement by which their rates were reduced, but just what they were I can't say without looking it up — where there was an agreement to reduce by steps.

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Q. Now, where there was an 80-cent rate, as is the fact, I think, in Brooklyn generally, and as concededly the fact in New York City? A. The Legislature made that rating, of course.

Q. Yes. And that rate has been sustained as not confiscatory, has it not? A. Yes.

Q. The cost entering into the manufacture of gas sold at 80 cents — take under the Consolidated contract would be, taking it say at 3.035 cents, the difference between 4.575 and 3.035 would be what? A. 1.540 — that would be equal to 6 cents.

Q. The difference 4.575 or contract price under the Kings County Company, is it not? A. Yes.

Q. And the contract price in the Consolidated, the difference is what, do you say? A. 1.54 cents.

Q. And what difference should that make in the rate? A. About 6 cents. That is figured on that alone. Figured on the oil alone.

Q. And if, in other words, the Consolidated Company were now paying 4.575 cents per gallon, then the Consolidated Company, in order to get as good a price for gas, then the Kings County Company should have been allowed in order to get as little a rate, should have been allowed eighty-six what? A. Eighty-six, fraction. Assuming that their cost of production were the same as the Consolidated, and assuming they were furnishing as much gas per mile of main and that their distribution expenses were no more than the Consolidated, which we cannot assume for a moment. I don't see how we can figure it that way, Senator, because you take this blueprint you have, shows me the Consolidated Gas paid on their previous contract, paid over five cents for gas, and still they are selling for 80 cents. So that doesn't follow.

Q. They are able to do that because of their larger number of customers per mile? A. And because of their capacity of main.

Q. Do you mean that the difference between 86 and 95 was due, then, not to the increased cost in the purchase price of the oil or the increase in the price of the oil purchased, but rather to the fewer number of customers per mile in Kings County? A. I would not want to be confined to that. There may be a hundred different economies the large company may have been able to make, and while the 80 cents might be absolutely fair, I am not going to say if you had a complete appraisal of the Consolidated Company's

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plant, that 80 cents would be just right. I do not stand a minute on that. I do not compare them at all. I don't see how we can. There are so many distinctions between the Consolidated and Brooklyn Union Gas, and a small company in an appraisal. I don't think we ought to.

Q. I appreciate the difference, but I wondered in determining to allow a 95-cent rate, you made not only an allowance for the various differences in the physical condition surrounding the manufacture and delivery, but also an allowance of nine cents, or approximately nine cents per thousand feet for the difference in the price of oil? A. No.

Q. You did not? A. No, we did not take that into consideration. We did not take the other companies into consideration at all. I just took the appraisal and what it had cost this company to produce, what their actual loss. Now, their loss in leakage and condensation was a great deal more than these larger companies as well.

Q. The Kings County loss? A. The Kings County loss was something like 14 per cent and in some cases it was shown it was as low as 8 per cent. That would be on account of the difference of the customers from the using and on account, as I said before, the difference in the size of mains, and number of customers along there.

Q. Well, how do you account for the fact that in 1910, according to the blueprint in evidence, the cost of production delivered was only 60.67 cents, while in 1914 the cost was 70.37, as shown by this paper? A. Well, I can't tell you from that where the additions were. The labor increased from 3.20 to 3.56.

Q. As shown by the statement? A. As shown by the statement. The gas-making labor. The boiler fuel increased from 2.66 to 3.13, and the generator fuel from 6.10 to 7.35. Water gas oil from 10.22 to 16.69. Supplies and expenses from .93 to 1.02. The credit residual produced was .86; in 1914 it was $100. That is not very much in water gas. In coal gas there is quite — in repairs to works decreased just a trifle from 1.36 to 1.33, but with the exception to the repair to the works, there is an increase on all the other, the fuel, labor and supplies and everything else.

Q. Now, didn't those various increases strike you as significant, and worthy of more investigation than they received? A. I don't

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think so. I think the Commissioners who heard the case went into this very carefully.

Q. Can you tell us at what price the company was selling gas in 1910, just prior — it appears in your record, of course — just prior to the filing of this petition in 1910, gas was being sold at a dollar a thousand, wasn't it? A. I think that was the rate.

Q. And the cost of production and delivery as shown by this schedule was 60 cents a thousand? A. 60.67.

Q. And that cost included not only all the cost of labor and materials, going into the production, but it included some item of depreciation, maintenance and so forth, repairs and all that sort of thing, didn't it? A. Well, not the cost of manufacturing, except in this particular, I will —

Q. Well, it included the cost of manufacture, 60.67? A. Yes, and the distribution.

Q. Now, it included the commercial administration, business promotion, general legal expense, other general expenses, and general amortization, as well as taxes, uncollectible bills and office expenses? A. It includes whatever it states there.

Q. In other words, it left 40 cents on every thousand feet, or approximately 40 cents on every thousand feet as a profit, did it not? A. No, I wouldn't say as a profit.

Q. Well, as a return upon the investment if you choose to put it that way. A. Have you my opinion here, or a copy of it? The general amortization on the amount to be put aside from depreciation was handled separately in the opinion. I see general amortization, but I do not find the depreciation in this. My opinion would show whether it was handled separately. I am under the impression it was.

Q. Well, the item then, in 1910, of 60.67 cents per thousand feet covers the cost of the gas made? A. Distribution.

Q. The distribution expenses, the cost of maintaining the municipal street-lighting system, all cost of commercial administration, business promotion, general law expenses, other general expenses, general amortization, taxes, uncollectible bills, and office rent, does it not? A. Yes.

Q. And when sold at a dollar a thousand cubic feet, there would remain .3933 cents per thousand cubic feet, as profit or as return upon the investment. A. No, I don't think so. I figured that in

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a different method, perhaps. I think that the depreciation was taken out of that, too, but I will be glad to look it up.

Q. Well, put it this way, then, that it covers the return on the investment, and provides for depreciation — the .3933 cents per thousand cubic feet covers depreciation. A. Well, I would not want to say that it did cover depreciation, but my idea in the opinion it was handled in that way. You remember the depreciation was kept separate.

Q. Put it a different way. The rate was a dollar a thousand? A. Yes.

Q. The cost of production and transmission was 60.67? A. Yes.

Q. The difference was available for any expense not covered in the schedule of costs of manufacture and transmission, and the return on the investment? A. Yes.

Q. In 1910, there were, according to this schedule 580,728 units sold at practically 40 cents profit per unit,— that is, profit, depreciation, and so forth? A. And other expenses. There is that much above the 60.

Q. Above the cost of production and transmission? A. Yes.

Q. We will leave it that way, which would mean in dollars and cents $232,291.20? A. If that is what it figures up.

Q. The bonded indebtedness at that time was the same as at present, $3,178,000? A. Yes.

Q. At 5 per cent? A. Yes. I am not sure that that was the bonded indebtedness in 1910. That is the bonded indebtedness now. I don't think it was changed in the four years.

Q. My recollection is it was not. A. Of course you know, Senator, we do not take into consideration the bonded indebtedness. We take into consideration the appraisal of the plant.

Q. I appreciate that fact, and I may as well say right here that my purpose of elucidating and putting upon the record these various elements and this evidence as to cost, distribution, and so forth, is not so much in opposition to your opinion as it is in opposition to what you regard as the rule laid down by the courts under the statutes in the determination of these rate questions. A. Well, I think it has been pretty generally accepted to be the law, the rule, but we would be very glad to have it clarified, if it can be.

Q. I don't know as I can clarify it. A. I mean the Legislature.

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Q. So that the $232,000 remaining from the sale of gas in 1910 provided for the payment of interest at 5 per cent upon the gross bonded indebtedness of the company and left $72,000 in round numbers available for distribution upon the capital stock of the company, after deducting for depreciation and no other expenses not enumerated? A. Yes, I should say so. I think that is a very fair statement.

Q. And that capital stock was two millions of dollars and was issued without the payment into the treasury at any time during the history of the company of any cash? A. We have been unable to find, I am informed by Dr. Weber's department and by Dr. Weber himself, of any money being expended in the company from the sale of stock. As I said, there was some $60,000 put in from surplus at one time, if I remember.

Q. Now, hasn't there been more than sixty thousand dollars put in from surplus? A. There may have been. That was just a figure I had in mind.

Q. Was there any effort made by the hearing Commissioner or did you in the preparation of your opinion, to ascertain whether or not a sum greater than sixty thousand was not invested in property from the surplus funds? A. I may be wrong on those figures. I have not looked at it. But in that tabulation that you will find in my opinion, figures at one time there was more put in than the bond issue of that period figured up, and that, as I understand it, was put it. Not necessarily from surplus, but from current funds.

Q. From earnings? A. From earnings, and just what that amount was I would not attempt to state offhand.

Q. I wonder if this is a fair statement of your understanding of the situation? A. Now, there may be, Senator, in some of these balance sheet items, there may be some of that surplus of the company that is reflected in some of those items there. I point out in my opinion that there is some six hundred thousand dollars. I don't know as I state the amount. I state it is practically the amount they claim for going value that they had in their surplus account. That came out in this bond case, and also the balance sheet of the company showed it in this other case. I point out that there is a surplus there. Now, it is quite common to invest those surplus accounts and there is no law against it I know of to invest those surplus accounts into some other account on the other

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side so it balances back and forth, and that surplus account might not be all cash, and they might not at any time be able to show they had that amount in outside securities. Sometimes they buy their own securities.

Q. They might have used that surplus for capital purposes? A. Yes, in all probability they did. In this bond case, I think they used $135,000 of it for —

Q. For capital? A. For capital purpose and they are asking to be reimbursed. That is quite common. We have some companies that make a practice of buying their own securities. The Manhattan Company, they have a surplus they are very careful to keep intact and separate from other funds, and they buy their own bonds. They are selling for something like 80 now. They buy their own bonds and put their own bonds into that surplus account, which is pretty good business.

Q. Good financiering? A. Good financiering, and some of the other companies —

Q. There is no doubt about that. A. And some of the other companies, some of the smaller companies, are doing the same.

Q. But have you anything or can you produce anything that will show the amount — is it possible to obtain from the records of the company — I will put it that way — that will show how much actual cash has been invested in this business by the holders of the stock and bonds of the company? A. Why, that table that was put in, after careful computation by Dr. Weber, is the closest to it that I know, and there is some two or three years on that that is estimated, but he got it from the testimony in the case. That is the nearest thing I think it is possible to make it.

Q. That is appraisal three and a half million of dollars? A. Whatever that table figures.

Q. I think it around three million four hundred thousand? A. Yes. You see there was an old coal gas plant there that was thrown out and scrapped.

Q. By the way, was that regarded as a loss at the time that was done? A. That is what they claim they ought to have the going value on, that that was in the nature of an experiment and it was changed, and that should be allowed as going value. That is what that tabulation of Dr. Weber's showed the fallacy of.

Q. Do you know of a statement in the record by the President of the Kings County Lighting Company that they actually made

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money when they changed from the coal gas to the water gas proposition? A. I don't think there is any question about that.

Q. Did he testify on that subject? A. I think so.

Q. Did he say that they made money by that method? A. By the change?

Q. Yes. A. Yes.

Q. That is your opinion? A. That is my opinion.

Q. Except they had to write off? A. They had to write off their old plant. I will tell you about that, too, Senator. We require a high candle power in New York, the Bureau of Gas and Electricity and the Public Service Commission, and all that require a high candle power, and it is absolutely necessary to use this oil in order to produce it. Now, there is a great agitation now to change from candle power to thermal unit, which is the British theory — that thermal unit which is the heating quality of the gas which can be brought about for very much less money by using the coal gas, but where a company is using coal gas in a locality where they insist on certain candle power, some one has to stand at the generator practically all the time to provide against change of temperature during the night, and all that. And if the gas is getting a little low on candle power, have to put in more oil, have to add oil to that production in order to make it the necessary candle power.

Q. Raise it to the necessary standard? A. Yes. The up-State Commission — I sat with them in a number of hearings —are considering now the question of changing to the B. T. U., whatever they call it, the British thermal unit. And personally I think if the thermal unit is made high enough on account of the use of these mantles for gas being so generally used now, the gas mantles, I think in all probability the gas could be produced for less and that the community and the individual would receive the benefit of it, under proper regulation, of course.

Q. Now, to get back to what I was developing: Is it in your opinion fair and proper to allow a return greater than 7½ per cent upon the actual amount of money shown to have been invested in the plant by the bond and stockholders of the securities? A. Yes. If the value of the plant — for instance, you take real estate that I spoke of the other day has increased. As I understand the law, we must allow them the return on the present value — the

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present appraised value of their property, and the Court of Appeals in the very case where Commissioner Maltbie wrote in favor, and said that the increase in the land value which was something like thirty-five thousand dollars a year, should be counted as a return to the company, and should be subtracted from the other return, which they get from the manufacture of gas. The court says no — the court says no, and so we have to allow, as I understand the law, not only the value of the plant as it was originally built and put into use with the additions to it, but any increase that the property has sustained by reason of the increase in land values which in this case amount to something like six hundred and fifty thousand dollars, as I remember it.

Q. Isn't it true that the allowance of 95 cents will be sufficient to pay the interest upon the bonded indebtedness at the rate prescribed in the bond and pay a dividend to the holders of the stock of at least 8 per cent? A. I don't think so. Not at the rate that I have figured.

Q. Have you figured on a rate for the holders of the stock? A. No, not at all.

Q. You do not contemplate that 95 cents will pay a dividend? A. No, I did not take that into consideration at all.

Q. Well, will that be the result? A. I don't care whether they ever get any return for their stock, as far as our duties are concerned.

Q. Will it be the result? A. I don't think so.

Q. Has the company paid dividends? A. Yes.

Q. Do you know at what rate? A. Yes. I point out in our opinion that although we do not take those things into consideration in determining the going value, I did take it into consideration that for the last four years it paid 6 per cent.

Q. And don't you think, as a matter of law, it should be taken into consideration? A. Yes, I think it should, or else I would not have done it, as fixing the going value.

Q. You think you are justified in fixing it under the value? A. As the going value.

Q. And as to the rate to be required from the consumer, too? A. I doubt if we would be upheld by the courts or justified in taking into consideration whether there was any stock at all or not, or whether it was a private individual that runs it. I think the

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law is just as applicable to a private individual or municipality. In fact, it says so right in the law. I don't think we should take that into consideration.

Q. Well, the company has accumulated a very substantial surplus, has it not? A. Yes.

Q. A surplus which now aggregates approximately six hundred thousand dollars? A. Yes.

Q. Not only have they paid dividends upon that stock and interest upon their bonded indebtedness, but they have accumulated a surplus equal to approximately one-quarter of the entire outstanding capital stock? A. Yes.

Q. On the rate of 95 cents? A. No. I don't know when that accumulated.

Q. Ninety-five or a dollar? A. Yes.

Q. Well, a good part of that accumulation or some part of that accumulation occurred prior to the reduction from a dollar to ninety-five cents, which took place in 1911? A. From the increased stock I should say that the large profit in this company, and I think I will be borne out by everybody that knows the fact, was on account of that favorable street-lighting contract by which they are getting $1.75 for supplying the street lamps per thousand, when the law everywhere else had reduced it to 75 — the statute, and they have hung on to that contract and that is where they have made their money. Now, I do not find it from the record but I get it from somebody around our place, that increase of two million in capital stock before the formation of the Public Service Commission was practically a capitalization of the street-lighting contract. You understand what I mean. I have heard it stated. Whether I have heard it stated from some one who argued the case or otherwise, that this lighting contract was capitalized, when the two million dollars additional capital.

Q. And that was prior to the Public Service Commission? A. It would not be allowed now, because we won't allow any contract to be capitalized as against the State law.

Q. The law forbids? A. The law forbids it.

Q. Is that contract still in force, Commissioner? A. Well, it is in dispute. The Corporation Counsel claims that it is not in force; the company claims that it is. The city has refused to pay

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the bills for the last few months, and it is in litigation. At any rate, by its terms it expires on December 1st, I think.

Q. 19 — A. December 3d, 1916.

Q. About a year yet in which to operate under that contract? A. Yes.

Q. Does that contract have anything to do with the determination of the rate? A. Yes. That and the price of oil was the reason that I suggested that we make a rate but for one year, so that at the expiration of that time we could take the whole thing up and have an adjustment of it that would be legal without any guesswork, and that the people would not be kept out of what they were entitled to for a longer period than was absolutely necessary.

Q. Well, was it your thought that the Commission would retain jurisdiction of this proceeding during that year, during the ensuing year, or will it be necessary at the end of the period of one year provided for in your opinion to institute a new hearing? A. No, that would be taken care of. My idea was that counsel should prepare an order — while I did not say so in so many words in my opinion, because we do not say that in words — that the order should be prepared whereby it should be redetermined at the time this oil contract ran out, either by a further hearing or a rehearing. We very often make a sort of intermediary order. And then we could go into the matter and find out what the new contract was, and watch the execution of it very carefully, and then we would know, too, the effect on this street lighting contract.

Q. Now, this high price for lighting the streets will continue for a year, during which time might it not have been fair to give to the private consumers a very substantial reduction because of the high price of street lighting which the consumers as taxpayers are paying? A. No. Then suppose the court says at the time the Legislature changed the rate to 75 cents that you should have reduced your rate to 75 cents, and the Commissioner of Gas and Electricity's contention is right, and not pay this money they are holding up. That might leave the company short. I think those things were equities that should be —

Q. I don't quite get your idea. A. You suggest we reduce the rate to private consumers because the company is making so much on its street lighting contract.

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Q. Which is coming out of the pocket of the consumers as taxpayers. A. Suppose the court says before that time you can only recover 75 cents for street lighting. That's the question in the case. But the question is whether they get $1.75 or 75. If they say, "Why, here, you got a bill at 75 cents, and all you can recover against the city is 75 cents," if we had given the consumer part of that, in my opinion, it would have been an injustice.

Q. Injustice to the corporation? A. Certainly.

Q. The Kings County Lighting Company? A. Yes.

Q. And therefore an injustice to the stockholders of that corporation? A. Yes, an injustice to the regulatory department of the State of New York to do a thing like that.

Q. But the stockholders not having paid anything for their stock, would not have suffered seriously? A. I am sure we ought not to take into consideration whether they paid anything for their stock or not. It is a matter of justice to me.

Q. Now, I have before me the Exhibit No. 10 offered by the Commission in the proceeding for a reduction of the rate, as printed in the record of that proceeding on appeal to the Court of Appeals, which apparently for the year 1910 shows a surplus of more than $546,000. A. In 1910?

Q. Yes. A. Yes.

Q. In 1909, a surplus of more than $532,000; in 1908, a surplus of $522,000; in 1907, a surplus of $502,000; in 1906, a surplus of more than $446,000. A. That was at a time they were paying no dividends.

Q. Yes. Whether it was or not I wanted to know. A. Yes, that was before they paid dividends. I think they commenced to pay dividends in 1910, my opinion states. Then they commenced to pay 6 per cent. There was a year or so they paid 2 per cent, and one year they paid 4.

Q. Haven't they ever paid more than 6 on the stock? A. No, not that I am informed of.

Q. In 1905 the surplus was more than $385,000, in 1904 it was more than $340,000, in 1903 it was $320,000, in 1902 it was $399,000, and upwards in each case. That means, of course, does it not, that after deducting from the assets the par value of the capital stock and treating that stock as having been fully paid for, there still remained over and above all their liabilities the

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surplus represented as shown on that sheet, does it not? A. Well, I don't know what the method was of figuring that, whether that was bookkeeping surplus or whether it was an item used to balance the balance sheet.

Q. It doesn't matter, does it; it is set up as surplus? A. That is from the reports of the company, and I would not want to say that is correct, or anything of that sort.

Q. I do not ask you to say it is correct, but it is what they certified to be their surplus over and above their liabilities, and over and above their capital stock liabilities, and over and above their funded debt? A. Surplus that might have been distributed to stockholders at any time, I should say.

Q. And did that establish the book value at a figure around upwards of 120? A. Well, I wouldn't want to say.

Q. Instead of its par value? A. I wouldn't want to say.

Q. Well, with a capital stock of two million and surplus of five hundred thousand dollars, a quarter of the entire capital stock, isn't it? A. Yes.

Q. And that would make the stock worth book value at least par and a quarter besides? A. It naturally would, but it was actually worth that, or whether there was any call for it in the market.

Q. It was the company's statement, and the company is bound by it? A. Yes. That is taken from their statement.

Q. And shouldn't it have been or wasn't it taken in consideration in the determination of the rate? A. It was. It was in the determination of whether or not there should be a going value.

Q. Well, was it in the determination of whether or not the rate of 95 cents complained against was too high? A. Well, indirectly in that way. They were entitled to nothing to recoup their earlier losses.

Q. Was the price of gas sold by this company ever above the rate of one dollar to the private consumer, do you know? A. I think so. I think they got as high as $1.25.

Q. That was in the earlier days? A. They got two dollars on the start.

Q. That was in the earlier days? A. Yes.

Mr. Cole.— Permit me, Senator — the highest rate was $1.75.

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Q. And when was it reduced to a dollar? Perhaps Mr. Cole can tell us.

Mr. Cole.—About 1901 it was reduced first from $1.75 to one dollar.

Q. Substantially about 1901 it was reduced to $1.25 — as long ago as 1901 the rate was reduced to one dollar, according to Mr. Cole. Since 1901 the company has accumulated from earnings surplus which in 1902 was $399,000, and which now exceed $600,000 by the report as to the last June 30, 1915, and that surplus has been accumulated over and above the value of the capital, which in 1902 had been entirely taken care of or made good out of earnings? That surplus has been accumulated on the rate of a dollar a thousand? A. Plus $1.75 for —

Q. For street lighting, yes? A. That was the main profit for the company.

Q. You think that was the main profit? A. I think that street lighting contract every one will admit was the profitable end for this company.

Q. Now, all that profit, whether coming from the private consumer or coming from the sale of gas for the lighting of the streets, has come out of the pockets of the inhabitants of the Thirtieth Ward, has it not? A. No, the street lighting contract, while originally was with the old town of New Utrecht, I think it was at the time, I don't think I am wrong. That was with New Utrecht, wasn't it, Mr. Cole, finally became a part of the city of New York? Just how it has been distributed, whether it is a tax on the whole community or whether it is confined to the borough of Brooklyn, I don't know. First it came into the city of Brooklyn and then into the city of New York.

Q. Well, the company has had no source of revenue except from private consumers and public treasury? A. I see there is $12,000.

Q. It is inconsiderable. Its revenue has come from the private consumer and city treasury? A. Yes.

Q. And during those years, during the years of the existence of this company, it has provided in such a manner and has sold its product at such a price as to make good its $2,000,000 of capital

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stock for which no cash was ever paid into the treasury and has accumulated a surplus of $600,000, the surplus having been accumulated during the period of time covered by the sale of gas at the rate of a dollar a thousand, or the greater part of it? A. And the street lighting as well.

Q. I am treating it all. A. That is from the company's balance sheet that they claim that much property.

Q. Notwithstanding all of which it was your deliberate judgment, as expressed in your opinion, that the rate for the next twelve months beginning December 1st should be at the rate of 95 cents per thousand cubic feet? A. Well, I would not say "notwithstanding all of which."

Q. Well, you took all that into consideration, I take it? A. I took that into consideration as regards the going value, but I did not take into consideration anything of that sort in the value of this plant.

Q. Well, these facts were all before you? A. They were in a general way.

Q. And you reached the conclusion that 95 cents was a proper and just rate? A. Why, I reached just the conclusion that I expressed in my opinion, based upon the facts that were disclosed there.

The Chairman.— We will suspend until 2:30 P. M.

AFTER RECESS

Senator Towner acting as Chairman.

COMMISSIONER WILLIAMS on the stand.

Now, I stated this morning that I did not think a dividend of over 6 per cent had been paid on the Kings County Lighting case. I find that in 1913 there was a 5¾ per cent dividend paid and in 1914 a 6¼, making it an average 6 per cent. I know that in my opinion I stated it for the last two years that there had been an average return of 6 per cent, so that I wish to correct my testimony that there was in 1914 it was 6¼, whereas in 1913 it was 5¾, making that

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average. Then I have figured out the difference on this exhibit which was put in in the last case more especially to determine the question of going value, or no going value, as I figured at that amount that was paid from earnings, surplus earnings invested in the business in 1910, amounted to something like $59,000. I think I stated about sixty, and I would like to call attention to that in addition to the direct return in the form of interest and dividends. The investors owned property acquired out of surplus earnings invested in the business. This is indicated by comparison between capital invested as of December 31, 1910, with an appraised value of the property, and the balance sheet of undisputed surplus. Now, as I explained, I took this case on from the time of Commissioner Maltbie's determination, which was 1910. I find that he did have something of this sort before him when he made his decision, and his determination was based on the actual appraisal of the property, and also upon the capital actually, capital as he could find it had, although it was not in as good shape as it is now on this exhibit which you have practically a copy set forth in my opinion. But, so far as the return on the capital invested has any bearing upon the case, that was taken into consideration as well as the actual appraisal of the property.

Q. In determining the rate? A. In determining the rate, and also in determining the additions and rate, although in my opinion you will find in this that I speak of reproduction cost, reproduction cost rather than in the words of the statute, capital actually expended, because we have taken from that which has been our practice and which was approved by the courts, and especially in this case — take the reproduction cost and take from it the depreciation which make — depreciation out of that $551,000 all told — which makes it less favorable to the company than if we took the reproduction cost which is the wording of the statute.

Q. Well, if it is agreeable to you, and you can come back in the morning, I have an engagement. A. Do you know you will want me?

Q. I think so. A. If you will let me know, I can come back.

Chairman Thompson.— Well, Mr. Chairman, Mr. Lewis has a private matter this afternoon, and the remainder of our legal

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staff is very desirous of using our stenographer until 9 or 10 o'clock on some matters we have arranged, and for that purpose I suggest an adjournment until to-morrow morning at 11 o'clock. I will announce I did receive a telegram from Mr. Polk last night, about 9 o'clock, asking to be here to-morrow morning, and I wired him and said the Committee would be glad to meet him to-morrow morning at 11 o'clock.

Chairman Towner.— We will adjourn until to-morrow at 11 A. M.

NOVEMBER 24, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee met at 11 A. M. pursuant to adjournment.

Senator Towner acting as Chairman.

The Chairman.— Will the Committee please come to order?

TRAVIS H. WHITNEY on the stand.

Examination by Mr. Lewis:

Q. Have you anything else that you produced at my request? A. Yes. You asked me to furnish a record of attendance of the formal meetings of the Commission during the years 1914 and 1915. I offer record to show attendance of meetings of Commissioners during the year 1914.

Mr. Lewis.— I ask that that be marked in evidence.

A. And 1915.

(Received in evidence.)

A. The other day I had here at your request data with respect to cost of automobiles and maintenance to June 30, 1915, and I stated then that I would furnish a copy that I then had, and this is the copy I had that day.

(Offered in evidence. Received.)

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A. I was asked to bring that data down to the 1st of November, 1915, and this is a tabulation showing those figures down to and including October 31, 1915.

(Offered in evidence and received.)

A. You also asked me for a list of so-called rate cases before the Commission. I have prepared a list of cases with respect to various classes of corporations relating to rates and regulation as to rates, which as to street railroads includes transfers.

(Offered in evidence and received.)

Q. Now, if you will be good enough to explain what this is and make any explanation you care to? A. See date on it on which hearings were held during the year 1915, which shows as to the hearings of that date, the case number, the time the hearing was commenced and the time at which it was adjourned. On the right-hand side the name of Commissioner presiding at each of the hearings, or Commissioners. In the center of each page where the Commissioner presiding was different than the previous assignment. The previous assignment is shown by parentheses in the center of the page. That is from January 5th, which is the first day of the year on which hearings were held down to and including November 18, 1915.

Q. Now, you have also produced at my request a copy of the rules of the Commission? A. Yes, sir.

Mr. Lewis.— I offer these in evidence so that they will be formally before the Commission.

A. Is that all you wanted to ask me?

Q. Yes, except one other thing. Is there a case in which action has recently been taken known as the Fender case? A. Well, there is a Fender case, Senator, that is quite long standing, and from time to time there has been action in that case with reference to one company or another, because it applies to a great many companies.

Q. Was there an order against the Brooklyn Rapid Transit directing the adoption and use of fenders whenever a suitable fender would be submitted for the approval of the Public Service Commission? A. Yes, that order was made a good while ago.

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Q. And has recently been rescinded? A. Within a year.

Q. Can you give me the record on file on that case during the day? A. Yes, I will send that down.

(At this point Senator Thompson assumes the Chairmanship.)

Chairman Thompson.— I have had some telegraphic communications with Mr. Polk, former Corporation Counsel here, in which I agreed that he might be heard at 11 o'clock, and it is 15 minutes after 11, and if there is nothing else to interfere, I suggest that Mr. Polk be heard now.

Mr. Lewis.— No objection, as far as I know, if Mr. Polk refreshes his recollection from any source.

Chairman Thompson.— It is not a case of refreshing his recollection, but he wanted to know what Mr. Maltbie testified to.

Mr. Lewis.— The official minutes have not been transcribed, but this gentleman tells me the minutes taken unofficially have been transcribed, and he has sent for them.

Mr. Polk.— We can get those after we start, and I can refer to that particular part of Mr. Maltbie's testimony.

FRANK L. POLK on the stand.

Chairman Thompson.— Did you want to be sworn?

Mr. Polk.— Yes, I want to be sworn.

(Whereupon the witness was sworn.)

Examination by Mr. Lewis:

Q. I understand, Mr. Polk, that you desire to appear before this Committee for the purpose of making a statement in reference to the Amsterdam Avenue stock purchase — rather, in reference to the purchase by the Edison Electric Illuminating Company of 122 shares of stock of the Amsterdam Light, Heat and Power Company, concerning which Mr. Maltbie testified on Friday, is that so? A. Thank you, or anything else the Committee wants information on. I was appointed Corporation Counsel on February 1, 1914. Some time after I was appointed — I am not quite sure of the date — Mr. Maltbie came in and told me of these two

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cases. The application before the Public Service Commission on the part of the Edison Company of Brooklyn to acquire one hundred twenty odd shares of stock with the privilege of merger. I rather got the impression from Mr. Maltbie that he felt there was disposition on the part of some of the Commission to grant this request.

Q. Will you excuse me for just a moment? A. And he came to me unofficially with the idea of getting me, to inform me of the situation, and to get me to take a position on it. I wrote a letter to the Mayor some time the latter part of March, and giving a history of the case, and my recollection is I wrote the Public Service Commission on the subject, but as to that, I would not be sure — it is just a recollection. I did not hear anything more of the case until some time in June. Mr. Maltbie came in then and told me that the company, the attorneys for the company were making it somewhat disagreeable and insisting on action. The matter had been held up then almost two years, and he said they were insisting on some action being taken. I wrote a letter on July 10th — at least I found a letter that I did write on July 10th, in which I state — I think the letter is in the record. The effect was that the city would not withdraw its objection. Some time between July 10th and July 24th — Mr. Maltbie says the 17th — I have not got access to my diary, so I cannot fix the date. My diary is not here — Mr. Maltbie either called me up or came to see me, and told me that he had been advised by his counsel — I wish to make it perfectly clear — the Corporation Counsel is not the counsel for the Public Service Commission — they have their own counsel, very able counsel.

Chairman Thompson.— There was counsel enough down there between all of you.

Mr. Polk.— Well, you as a lawyer ought not to object to that, Senator.

Chairman Thompson.— If I was a resident here, I might not.

Mr. Polk.— Well, you almost are now, aren't you?

A. He had been advised by his counsel that they had been threatened with mandamus to compel them to act, and that counsel

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stated to them that they could be mandamused. He also stated to me that the counsel had stated that if the two propositions were separated, that is, the application for transfer of the stock was separated from the application for the merger, that the city's interests would be protected.

Chairman Thompson.— Who stated that?

Mr. Polk.— Mr. Maltbie said he had been advised so by his counsel. That is the first I had ever heard of it. I told Mr. Maltbie that he would have to do as he thought proper; that I would not withdraw the objection of the city. There was no further discussion on the subject. The meeting was held on the 24th, I understood afterwards, and the resolution was passed on the 30th. I will say as a matter of fact, in the meantime, the office did look up the question and they came to the same conclusion as the counsel for the Public Service Commission, but I never expressed that opinion to Mr. Maltbie until after they had acted, and my recollection is very definite on that. I discussed the matter with Mr. Maltbie, too, discussed it with him yesterday. Now the action was taken on the 30th. In due course the notice was sent by the Public Service Commission to the Corporation Counsel's office, acknowledged, the receipt acknowledged, and the paper filed in the file having to do with this application before the Public Service Commission. In other words, there were two files, one for the Public Service proceedings and one for the proceedings against the company, against the Amsterdam, for the recapture of the charter.

Q. That is, the action was not against the city — the action was not an action by the city against the Amsterdam Company? A. I am not very clear on that. I have forgotten it. The point at issue was a question of the validity of the franchise.

Q. To enjoin the board from granting — revoking the franchise? A. Yes. Now, that was my connection, as I say, with that particular proceeding. Now, in regard to Mr. Burr. The Chairman seemed to feel that there was great significance in that, and so expressed himself. Mr. Burr — when I was appointed in February, I took up the matter of the reorganization of the office with the Mayor, and it was decided — in fact, before I had ever heard of this case — before the Mayor had heard of this case,

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that in the general reorganization of the department, that it was desirable to make a change in that bureau. Nothing in any way reflecting on Mr. Burr at all. But it was decided that a change was necessary. The change was not made at that time for two reasons. First, was not finding — we had difficulty in finding Mr. Burr's successor. I had an accident in April which delayed matters, and I did not speak to Mr. Burr about this or write him until May. I wrote him in May a note stating the case, and Mr. Burr promptly handed in his resignation, and I arranged it should take effect the first of July, my theory being that Mr. Burr was entitled to the month of June as a vacation. Before Mr. Burr left we discussed the question — he brought up the question of representing the city in this suit and in other suits. My recollection is I told him I would be very glad to retain him in cases where he had peculiar knowledge, that is, in cases he had been conducting. That had to do, not with the proceedings before the Public Service Commission, but the suit in which the city was defendant, and which is referred to.

Q. That did not have to do with the proceedings before the Public Service Commission? A. No. That proceeding had been closed. That had been closed for a number of years. Mr. Victory had had charge of the case right along, and there was nothing pending at all in the matter. That was not discussed. It was not suggested by him and was not suggested by me. I don't think he even thought of it. I went on my vacation in August and when I came back in September we discussed the terms of his retainer, Mr. Burr and I, and I gave him a formal retainer in the latter part of September.

Q. Have you anything further to suggest, Mr. Polk? A. That is all I can think of. I told you the two points apparently that have been raised.

Q. Were you familiar with the litigation that Mr. Burr had conducted for the annulment or the recapture by the city of their unused franchises previously granted during your term of office? A. Well, if you will tell me what cases you have in mind. It would be a little difficult for me to answer that question.

Q. Well, did you know of the fact that prior to your appointment as Corporation Counsel the city had formally entered upon a policy and adopted the policy of recapturing for the benefit of

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the city all unused franchises? A. Oh, yes. That was Mayor Mitchel's policy.

Q. Well, was it not the policy of administrations prior to Mayor Mitchel? A. Oh, yes, undoubtedly.

Q. Wasn't that policy adopted during Mayor Gaynor's term? A. Probably.

Q. And were you familiar with the fact that in one action brought which was finally passed upon by the Supreme Court of the United States, the right of the city to recapture unused franchises was upheld? A. What case was that?

By Somebody.— New York Electric Lines case. A. I may have. I don't remember. I could not testify now that I do actually remember it.

Q. Were there any other cases for the recapture of unused franchises pending when you became Corporation Counsel? A. I haven't got the record before me. I would not want to testify without the record. There probably were. I wouldn't know.

Q. And did you know that Mr. Burr had been engaged for several years in the work of prosecuting of actions for the recovery or recapture of unused franchises? A. I may have. I don't know. Of course I knew that he had charge of all those cases, Mr. Lewis, all those cases in the office; that he had charge of all those cases.

Q. And he had charge of those cases at the time you asked for his resignation? A. Yes.

Q. And was anything said between Mayor Mitchel and yourself at the time it was agreed that Mr. Burr should be superseded — by Mayor Mitchel and yourself at the time it was agreed that Mr. Burr should be superseded, as to the character of the work which Mr. Burr had been engaged in performing? A. Oh, yes.

Q. This recapturing of franchises? A. Not specifically that, but the character of the work he had been engaged in, yes.

Q. Was anything said on the subject of the recapture of franchises in your conversation? A. We discussed all those cases that came up in his bureau.

Q. And you recall that was one of the subjects? A. I assume it was. I do not recall.

Q. You don't recall? A. I assume we discussed it. Of course there were a number of franchises that that bureau covered.

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Q. Was this particular case discussed at that time? A. I did not know of it and the Mayor did not know of it.

Q. And you are able to speak for the Mayor, are you, on that subject? A. Yes.

Q. Have you had any conference with the Mayor since Mr. Maltbie's testimony? A. I have not.

Q. You said that you and the Mayor agreed that a change was necessary? A. A change was desirable.

Q. You used the word "necessary" which I took down as you uttered it — was it necessary because of any failure of Mr. Burr to properly represent the city's interest? A. Of course you have the right to ask those questions as you please, but it seems to me this is a line that is not going to get you anywhere. Of course, I will be very glad, and that brings a criticism of a gentleman of whom I have a very high regard, and I do not see where you are getting off, if you will allow me to say so, finally allow me to answer the question — yes, there was criticism.

Q. (Repeated by stenographer.) A. I prefer to say that it was considered desirable.

Q. Well, was it desirable? A. I am answering your question.

Q. Was it desirable because of any failure on Mr. Burr's part to properly represent the city's interest? A. That is the question of failure — I do not say "failure." It was considered desirable — I would not say "failure;" no.

Chairman Thompson.— What is Mr. Burr's politics? Anything in that, any question in that?

Mr. Polk.— No.

Chairman Thompson.— You do not have that down here the same as we do up the State?

Mr. Polk.— Not to the same extent. There is no question Mr. Burr did support Judge McCall and his successor did support Mr. Mitchel. No question about that, if you want to get that on the record.

Chairman Thompson.— It only illuminates my mind from an up-State aspect.

Mr. Polk.— But that was not the — that would be difficult to convince an up-Stater.

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Chairman Thompson.— Well, there are some city members on this Committee, Mr. Polk.

Q. Was there dissatisfaction with Mr. Burr's attitude, either on the part of the Mayor or your part, in connection with this line of work, to which he had been devoting himself? A. Not — when you say "this line of work" you mean all the work they were doing in the bureau?

Q. No, I mean this particular line of work of the recapture of franchises? A. No. Wait a minute. Excuse me. If that involves the New York Central Eleventh Avenue case, that was a factor in it.

Q. The New York Central Eleventh Avenue case; will you tell us what that case was? A. That was a case before my time. That was a case the Mayor was interested in when he was in the Board of Aldermen, the Death Avenue case.

Q. Had Mr. Burr represented the city's interests in that case? A. Yes, I think he had.

Q. And had he failed to properly represent such interest? A. I am not in a position to say that, because I was not in the case.

Q. Was that suggested by the Mayor? A. I would not say he failed. The Mayor did not say he failed.

Q. Was it suggested by the Mayor that he was dissatisfied with Mr. Burr? A. Yes.

Q. And did he give his reason for being dissatisfied? A. I assume he did. I don't recall at this moment. Of course you realize this is an exempt place.

Q. Yes, I realize, but that was a business administration, too. A. Yes.

Q. Perhaps offsets? A. Possibly.

Q. Was there any reference by the Mayor, do you recall, to Mr. Burr's conduct of that particular case? A. None that I can recall specifically and definitely now.

Q. Was it or was it not due to the fact that Mr. Burr had supported an opposing candidate for Mayor rather than Mayor Mitchel? A. No.

Q. That was not the fact? A. You will find a number of dead ones still in the office who did not support Mr. Mitchel, even a great many who hold exempt places.

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Chairman Thompson.— It is awful hard to get them out; we find that up at Albany.

Q. Now, at the time this matter of the Amsterdam stock acquisition came to you first, did you confer with Mr. Burr on the subject? A. Yes. I would not be sure. My recollection is that it first came in connection with inquiry from the Mayor's office, and Mr. Burr prepared a report and I based my letter on that report.

Q. You based your letter of July 10th? A. No, a letter to the Mayor's secretary some time the latter part of March — March 28th.

Q. You based your letter of March 28th to the Mayor's secretary upon the information you had obtained from Mr. Burr? A. And Mr. Maltbie.

Q. And did you subsequently write a letter to Mr. Maltbie in which you reiterated your position? A. As I say, I have not been able to get my letter book, but my recollection is I wrote two, one of which I have the original of here. One of July 10th is in the record, and I think there was another, but I would not be positive. I think I wrote him twice. I haven't got that.

Q. I have sent for it — I will have it here. A. Here is the original, if you want it. I don't think you have got that original there, Mr. Lewis. I have it here.

Q. I show you letter of July 10th, Mr. Polk. Did you at or about the date of the letter, July 10th, have any conference with Mr. Maltbie on the subject of the city changing its attitude upon the purchase of the stock of the Amsterdam Company? A. My recollection is I had. Mr. Maltbie called me up on the telephone, between the 10th and the 24th. He says the 17th. I could not testify to that definitely.

Q. And will you tell us what the conversation was on that date? A. He called me up and told me that he had been advised by his counsel — he told me that he had been threatened with a mandamus by the counsel for the Edison, and he had been advised by his counsel that he could be mandamused.

Chairman Thompson.— That is Mr. Maltbie?

Mr. Polk.— Mr. Maltbie. And he told me that he had also been advised that if they separated the two cases, one of the transfer of the stock and the other the merger, and provided that

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the transfer of stock should not be a merger, that the city interests should be protected. He told me that.

Q. He told you that? A. Yes.

Q. And did you acquiesce in the arrangement by which if the application and purchase of the stock should be separated from the merger case, you would be satisfied? A. No, I told him I would not withdraw the city's objection.

Q. Did you understand that there was an application pending for the merger of the two companies before the Public Service Commission? A. Well, it was for a transfer of stock — it was, as I recall, it was for a transfer of stock, with the privilege of merger.

Q. That was your understanding of the application? A. What my understanding was at the time. I don't know. I knew it was the fact. I assume I knew the facts then.

Q. Did you ever read the petition of the Edison Company? A. I don't know that I did.

Q. I read the prayer of the petition, dated August 10, 1912, in the matter of the application of the Edison Illuminating Company of Brooklyn for authority to acquire certain stock of the Amsterdam Light, Heat and Power Company, "Wherefore, your petitioner asks that your honorable Commission will authorize the acquisition by your petitioner of the remaining capital stock of the Amsterdam Electric Light, Heat and Power Company not now owned by petitioner, and amounting to 122 shares of the total par value of $12,200." You did not have the prayer of the petition before you, I take it? A. No.

Q. And were you advised that the application was for not only the right to acquire the stock, but also for the right to merge the two companies? A. Well, I won't say I was advised that the application was joint. My recollection is they told me it was for the transfer of stock with the privilege of merger.

Q. Did you discuss that question with Mr. Burr at any length as to whether or not, by the mere acquisition of the stock the merger could be accomplished, without the approval of the Public Service Commission? A. Why, there was a brief of Mr. Burr in 1912 on the subject of the necessity of having the consent of the Public Service Commission to any merger.

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Q. In order to merge? A. In order to merge.

Q. In order to merge, or the consent of the purchasing the stock in order that the companies might merge? A. That that was the way it was apparent.

Q. Well, which way was it? A. Which way was —

Q. Was the brief, on the necessity of the consent of the Public Service Commission to the merger itself? A. To the merger itself, my recollection.

Q. Or was it the consent of the Public Service Commission to the acquisition of the stock in order that a merger might be accomplished? A. The merger itself.

Q. Of course you are familiar with section 15 of the Stock Corporation Law on the subject of merger, I take it? A. No, I am not. I always look up the law and I have to refresh my recollection. I would not attempt to quote any law or section of the code.

Q. Well, did you look up the law on the subject at the time you were discussing the matter with Mr. Maltbie, to inform yourself as to whether or not a separation would be effective, and I want the word "separation" in quotation marks, would be effective to prevent a merger? A. With what; separation what?

Q. You have testified that Mr. Maltbie had said to you that if the application for the purpose of the stock and the question of the merger were separated — A. Well, of course, as you know, Mr. Lewis, from the order as granted, they put in a proviso that this transfer of the stock shall not be a merger. When I say "separated," you probably misunderstood me.

Q. They do not phrase it that way. A. Well, let's refer to the order. We have both got it. Mr. Burr, why don't you sit down by your associate counsel?

Mr. Burr.— Excuse me. I am asking Mr. Lewis a question, as I have a right to. I am here at a great personal inconvenience.

Mr. Polk.— So am I, Mr. Burr. Then we are both in the same boat.

Chairman Thompson.— So am I.

Q. I read from the order as follows: Paragraph 2. "That nothing herein contained shall be construed as authorizing, permitting or approving the merger of said Amsterdam Electric Light,

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Heat and Power Company by said Edison Electric Illuminating Company of Brooklyn, pursuant to the provision of subdivision 3 of section 61 of the Transportation Corporations Law, or otherwise." Was that the provision with which you were familiar at the time this discussion was had between you and Mr. Maltbie, or did he mention that such a provision would be included in the order? A. He mentioned that such a provision — he called me up and told me that it was going to be done; he had been so advised.

Q. Did your office examine that question to ascertain? A. Subsequently, after Mr. Maltbie told me what he was going to do.

Q. But before the order was made? A. I think he called me up on the 17th, or somewhere along there. The order was decided on the 24th. I referred the matter to Mr. Rosensohn or some other gentleman in the office.

Q. That was in July?

Senator Foley.— Your office did not draw it?

Mr. Polk.— No, we had nothing to do with drawing the order.

Q. Did you acquiesce in or agree to the opinion represented or prepared by Mr. Rosensohn? A. Did I acquiesce in it?

Q. Or agree to it or approve of it? A. I do now. We did not have any opportunity of submitting a written opinion, or anything of that kind. The whole matter was accomplished and all settled when it was put up to us.

Q. Did you receive any letters yourself from Messrs. Hatch & Sheehan, the attorneys for the Edison Company? A. In connection with this matter?

Q. Yes, in connection with this matter? A. I received none personally. I imagine it was sent to the office. I have no recollection.

Q. Or Mr. Sheehan personally? A. No, sir.

Q. Did you have any communication oral or otherwise? A. In connection with this matter?

Q. In connection with this matter? A. No. I had a communication with Mr. Sheehan in regard to the other case.

Q. Was that in writing? A. No, that was oral.

Mr. Lewis.— I think that is all, Mr. Polk, for the present.

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Examination by Chairman Thompson:

Q. Mr. Polk, as far as the Chairman of this Committee is concerned I have not any opinion about it except as I get it from the record as it comes in here and Mr. Maltbie's testimony, and coupled with the fact that Mr. Burr left your office on the first of July and went back on the first of September and in the interim this order was granted, and the further fact that the law provides that when one company owns all the stock of another company that makes a merger regardless of what might be said by the Public Service Commission? A. Well, the law does not say that, Senator.

Q. Well, I disagree with you. And with all those facts before this Committee, the statement of the Corporation Counsel's office was as much responsible here as the Public Service Commission, I think was justified. I noted from the testimony to-day there is a difference the way you remember the conversation you had with Mr. Maltbie and the way he remembers it. Now, I would like to ask you why it was necessary to grant this application in some form — why wasn't it a good idea then to deny this application? A. Why, that it what we would much prefer to have them do. The Public Service Commission would not do it.

Q. Did you tell that to Maltbie? A. I said yes, why not deny it. He said they can be mandamused. There was a question whether the city was a party in interest in this suit.

Q. They could be mandamused, but there would be a just judge somewhere to decide the question they raised on that mandamus? A. There was a grave question whether the city was a party in interest in this suit. The only interest the city had in this proceeding was this: I am talking as though I knew all about it at the particular moment. I did not. I have checked it up since. I knew something of it. The interest of the city was this. If the transfer of this stock would constitute a merger and the merger would validate the Amsterdam Electric Light Company's charter. Now the city's only interest was to prevent anything being done to validate that charter. If that charter was not validated we had no interest in the proceedings at all.

Q. I understand? A. There are two questions there. For instance, at the particular moment now my opinion is not of any

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more value than any one else's because I have not looked it up, but from the brief on file in the Corporation Counsel's office and the Public Service Commission now only showed that the transfer of stock would not constitute a merger; that you have to get the specific consent of the Public Service Commission to the merger.

Q. You would have to get the consent? A. To the absolute merger.

Q. To the acquisition of the stock? A. No. A separate thing. The Edison Company had control of the Amsterdam Company then — 122 shares in question were in the hand of a dummy. They had those stocks as much physically as they were ever going to get them. What they wanted was to get the shares in their possession. Now the getting of those shares does not constitute a merger. I am sorry to disagree with you. Assuming it did constitute a merger, then comes up the question whether the merger in any way validated the Amsterdam Electric Lighting Company's charter.

Q. I don't care to go into that? A. And that shows this: that if it could be shown that this did not validate the charter, then the city had no interest in the world in those proceedings before the Public Service Commission.

Q. I am not criticizing the Corporation Counsel's office? A. Well, I think you did.

Q. And I am not interested in this thing only so far as it affects the Public Service Commission. As I understand the mandamus by that company is to make the Public Service act in some way? A. They could make them act in that particular way if they could show there was no objection and if the party in interest making the objection had no valid right to make the objection.

Q. You do not think a mandamus would lie to make them grant this application? A. If they could show there was no interest. I am arguing now at the time something I was not admitting. I did not withdraw the objection of the city.

Q. Here is a lawsuit where the referee has dragged this case along for three years. A. Since you refer to that case, let me tell you in that particular case the counsel for the company has not claimed that this transfer of stock constituted a merger at all.

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If they thought there was any strength in that argument, they certainly would have put it in their brief.

Q. Why do you think they paid $10,000 for some stock that was not worth a cent? A. It had some value, because they could trade around with the Public Service Commission.

Q. Do you think they wanted to give away $10,000 in order to keep their rates higher? A. No. I don't think they are as charitable as that yet.

Q. Now, what I am getting at is this: Here is this case before Nicoll, postponed for three years. Now, why not the city try a little of that, and let them mandamus and let them appeal? A. I was not counsel for the Public Service Commission.

Q. I know, but don't you think if you vigorously went after Maltbie and said when he came to you, "Why, you mustn't grant this application, and make a fight on it," don't you think he would have done it? A. No. They had no good grounds for it.

Q. Maltbie wanted to grant this? A. Maltbie in his testimony testified here — he told me he testified yesterday he thought he had done a good thing when he granted this application, and Maltbie thought he was doing a good thing. He did not consult me. I don't know whether he was doing a good thing or not.

Q. In 1914, before the gubernatorial election, Maltbie did not want to see the parting of the ways between him and Sheehan? A. I don't get that.

Q. Sheehan wrote him a letter in which he said it would be the parting of the ways — Mr. Maltbie did not want the ways parted? A. I would not for a moment concede that. I think Mr. Maltbie is one of the most conspicuously honest public officials in this State. I think a reflection like that, such as you have been doing in all these things, is absolutely disgraceful.

Q. I can only draw conclusions. A. Well, you drew conclusions from the facts, as you did in my case. I have no personal feeling, but I think a man situated in a semi-judicial position, who takes the trouble to give statements to the newspapers reflecting on people trying to do their duty and who have never allowed themselves to be used or their office by anybody —

Q. I know this: There is no lawyer in Niagara county could ever write a letter like that to any judge or semi-judicial tribunal and get action. A. Which one?

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Q. I mean the letter directed by Mr. Sheehan to the Public Service Commission. A. That is between you and the Public Service Commission.

Q. That is what I say. A. But you have dragged everybody and everything into this except the price of apples.

Q. I don't care to deduct any conclusions from this, except — A. That is the first time you haven't reached a conclusion.

Q. I don't care to deduct any conclusion from this except that the Public Service Commission seemed to be in unreasonable haste to give the action that Mr. Sheehan desired in his letter. A. I had no interest in the matter, and had nothing to do with it, and did not advise it.

Q. As far as the Corporation Counsel's office is concerned, we don't care. I am going to accept your statement on the record, which modifies the situation very much. A. I saw Mr. Maltbie yesterday and told him what I was going to testify to, and he refreshed my recollection as to dates. When I first took up this matter, I had no recollection of it at all as to dates. I had a recollection I had not withdrawn any objection of the city, and I had not advised Mr. Maltbie as to the course Mr. Maltbie should pursue.

Q. I think between all of us we might rescue that old franchise. I don't know as it will be good for anything. A. In the meantime, don't sacrifice too many reputations.

Q. I can't help whose reputation gets in the way. A. You are not giving facts. You are drawing conclusions. You either did it for animus or something else.

Q. I don't care what organization a man belongs to, if there is anything comes before this Committee that happens to affect a reputation, I can't help it. Are you familiar enough with the reasons why this matter was adjourned before the referee as long as it was? A. I am more or less familiar.

Q. Well, what were the reasons? A. Well, I think they are more or less stated in that letter, which you have before you. The adjournment in the matter was first called to my attention by Mr. Burr, that these delays were being made. I think at that time the statement was made that Judge Hatch was sick and could not go on with the case. I told Mr. Burr not to permit any more adjournments, and say that Judge Hatch had to go on with the

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case, or they would secure other counsel. That was the only time I had any discussion with Governor Sheehan at all. He called me up and told me they would go on or get other counsel. The case proceeded. That summer Mr. Nicoll, the referee, went abroad. He was caught by the war and could not get home. The matter then dragged along. We pushed it as far as we could the following winter. Mr. Nicoll, he went to the Constitutional Convention, and he let the sixty days lapse, and we had the time extended because we did not want to be put in the position and have the company move to have the whole proceedings thrown out, and that is the way the matter stood when I left.

Chairman Thompson.— My attention is called to an article in the New York Times, Sunday last, November 21st. Now, that interview by me is substantially correct, except in this: It says Mr. Polk's action certainly is open to criticism. That was not the way I gave that interview. I said the action of the Corporation Counsel's office. I did not mean to make that personal. Otherwise the interview is substantially correct.

HENRY M. CHAMBERLAIN, sworn, testified as follows:

Direct examination by Mr. Lewis:

Q. I show witness communication dated November 18, 1912, addressed to Honorable Milo R. Maltbie, Case No. 1554, signed George S. Coleman, counsel to the Commission, dictated apparently by H. M. C., to R. B. Will you examine these documents, Mr. Chamberlain, and tell us what you know of its preparation? A. Yes. On the hearing Judge Hatch, who appeared for the plaintiff company, contended that if permission were granted to acquire the remainder of the stock of the Amsterdam Company, the Edison Company being the plaintiff company and having acquired all the stock of the Amsterdam Company, might merge the Amsterdam Company without making further application to the Commission.

Q. That was Judge Hatch's claim, was it? A. That was his claim. I took the position on the same hearing that a merger could not be effected without further application to the Commission. On that question Judge Hatch submitted a brief, and I

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prepared this letter to which you have referred, in reply to Judge Hatch's contention made on the hearing and made in the brief.

Q. But it was the opinion of counsel for the Edison Company that the acquisition by the Edison Company of the remainder of the stock of the Amsterdam Company would of itself permit of the merger without the application to the Public Service Commission for its approval of such merger? A. That was the opinion he expressed. I took the other view.

Q. And did you write the opinion which was signed by Mr. Coleman and submit it to Mr. Maltbie, in which the other view was expressed? A. Yes.

Q. That you have before you? A. Yes. I wrote that.

Q. Did Mr. Coleman have anything to do with its preparation? A. No, sir.

Q. Was it submitted to him for his approval? A. It was.

Q. Did he examine the question, to your knowledge, in any way? A. He went over it with me, as is his custom. Whether he picked up the law books and examined them, I do not recall, but I presume not, because the sections of the law referred to were quoted in full in the letter.

Q. Is it still your opinion that the Edison Company has not the power after having acquired the 122 shares to merge the Amsterdam Company? A. You mean without making further application to the Commission?

Q. Yes. A. It is still my opinion.

Q. Is it your opinion that the Public Service Commission must be requested — is it still your opinion that the two companies cannot merge except with the consent of the Public Service Commission? A. It is, yes.

Q. Have you any case law upon the subject? A. I don't recall.

Q. We have your opinion that the companies may not merge without the approval of the Commission, and the whole question turns upon the construction that may be placed by the courts upon the statutes relating to the subject? A. I think that is correct.

Q. Did you know anything about the history of the subdivision 3 of section 61 of the Transportation Corporations Law when it was enacted by the Legislature in that form, in its present form? A. Why, I don't recall now; I may have known at the time.

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Q. You were aware, I take it, that in the original petition the Edison Company stated, in paragraph numbered fifth, as follows: "That your petitioner is desirous of acquiring the remaining capital stock of the Amsterdam Company not now owned by it, and amounting to 122 shares, having a par value of $12,200, so that your petitioner upon acquiring the whole amount thereof may merge said Amsterdam Company, as provided by section 15 of the Stock Corporation Law"? A. Yes, I am aware that that is in the petition.

Q. And are you aware that in the prayer of the petition nothing whatever was said on the subject of the merging of the corporation? A. I don't recall that. The petition, of course, will speak for itself on that, but I do recall that the subject of merger was mentioned in the petition.

Senator Foley.— Is it covered specifically in the petition? Is the merger mentioned in the petition?

Q. I have read the only paragraph of the petition which in any way mentions the subject of the merger. Now, in the amended petition, subsequently presented, paragraph 10 reads as follows: "Tenth. That your petitioner is desirous of acquiring the remaining capital stock of the Amsterdam Company, not now owned by it, and amounting to 122 shares, and having a par value of $12,200, so that petitioner upon acquiring the whole amount thereof may merge said Amsterdam Company as provided by section 15 of the Stock Corporation Law." Now, the prayer of the amended petition recites as follows — I think identical with the prayer of the original petition: "Wherefore, your petitioner asks that your honorable Commission will authorize the acquisition by your petitioner of the remaining capital stock of the Amsterdam Electric Light, Heat and Power Company not now owned by petitioner, and amounting to 122 shares of the total par value of $12,200." That seems to be the only reference in the petition or in the amended petition to the proposition for a merger. Did you prepare the order, the form of order adopted by the Public Service Commission, Mr. Chamberlain? A. I did.

Q. And did you include in that the language — I read from the order, paragraph 2: "That nothing herein contained shall be construed as authorizing, permitting or approving the merger of said Amsterdam Electric Light, Heat and Power Company by

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said Edison Electric Illuminating Company of Brooklyn, pursuant to the provisions of said subdivision 3 of section 61 of the Transportation Corporations Law, or otherwise," did you include that language in the order as prepared by you? A. It is my recollection that I did.

Q. And did you regard that as effective for the purpose of preventing the filing by the Edison Electric Illuminating Company of Brooklyn of a certificate of merger with the County Clerk and the Secretary of State, in accordance with the provisions of section 15 of the Stock Corporations Law? A. I will answer that in this way: I thought the statute itself was effective, and in view of Judge Hatch's contention, and in view of the fact that the subject of merger had been hinted at in the petition.

Q. Hinted at or expressly declared? A. Well, had been mentioned in the petition. I thought he might contend later that permission to purchase the stock carried with it permission to merge.

Chairman Thompson.— Were you afraid of Judge Hatch?

Mr. Chamberlain.— No, sir; I am not afraid of him.

Chairman Thompson.— Make any difference to you what Judge Hatch thought when you were writing your opinion as to the law?

Mr. Chamberlain.— Not a bit. This was not an opinion counsel is asking me about. It is the draft of order. And I thought that it would be well to insert that provision in the order so as to forestall any such contention on his part, even though I thought the law was conclusive. I also put in the order a provision that the company should notify the Commission within a certain time, whether the terms and conditions of the order were accepted or not.

Q. And the company did notify the Commission that it did accept the order, with its terms and conditions, did it not? A. That is my understanding.

Q. Is it your contention that the acceptance by the company of the order with its terms and conditions binds the company or operates to prevent it from effecting a merger under the provisions of the Stock Corporation Law, section 15? A. I would hardly

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say that. I think the statute is conclusive on that, but I think it would put the company in a bad position, if it undertook to merge without first coming to the Commission, in view of the provisions of that order, and in view of its acceptance of the order.

Q. Isn't it true, Mr. Chamberlain, that two corporations not subject in any way whatever to the provisions of the Public Service Commissions Law may merge by filing in the office of the County Clerk of the county in which its principal place of business is located, and with the Secretary of State, a certificate of merger, showing that the one company has acquired and is the owner of all of the capital stock of the other company? A. I think that is true, generally speaking. I think there are some exceptions, however.

Q. And isn't it true that upon the filing of such certificate of merger as to such corporation, the two companies thereupon merge, and the possessor company thereupon becomes the owner of the assets, property and franchises belonging to the merged company? A. I think that is what the statute provides. I think it provides also that it is subject to all the duties and liabilities of the predecessor company.

Q. That, however, relates only to contractual and legal obligations, to which the merging corporation has entered, has it not? A. I don't think it is limited to contractual obligations. I think it extends to obligations of every kind.

Q. It extends to obligations arising out of contracts, certainly, doesn't it; it also extends to liability accruing at the time, does it not? If an action were pending against a merged corporation for personal injuries, the possessor company would become liable as the merged corporation was prior to the merger, for any damages that might be recovered against the merged corporation? A. Why, that may be so.

Q. Well, did you understand that this provision contained in paragraph 2 of the order operated to impose upon the Edison Electric Illuminating Company of Brooklyn any burden not imposed by statute in connection with the merger? A. No, I don't think it did impose any such obligation not imposed by statute.

Q. Is there anything in the law which would require either the Secretary of State or the County Clerk to take cognizance of, or

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is there any constructive notice arising and which binds the Secretary of State or the County Clerk because of the fact that this language is contained in this order? A. I don't know.

Q. Do you know of any? A. I don't know of any.

Q. And if your construction of the statutes applicable, namely, section 15 of the Public Service Law, and subdivision 3 of section 61 of the Transportation Corporations Law, shall be held by the courts to be erroneous, and Judge Hatch's construction shall be held by the courts to be the correct construction, then the necessary result of the granting of the application is that the Edison Company may merge, and thereby acquire all the rights that the Amsterdam Company had in the franchise which the city was seeking at the time the order was granted, to annul, isn't that so? A. I think that is so.

Q. And you took the responsibility of putting the city in that position when you wrote that opinion, did you not? A. I did not take the responsibility of putting the city in any position.

Q. You took the responsibility of putting the Public Service Commission where it could say that it took the action which it did take on the advice of its counsel, did you not? A. Yes, sir.

Q. You had in opposition to your opinion on the subject the claim supported by a brief set forth by Judge Hatch, did you not? A. Yes. But that did not affect the position of the city.

Q. And you had in addition the opinion of Mr. Delos R. Wilcox, the Chairman of the Franchise Bureau or Chief of the Franchise Bureau of the Public Service Commission, in opposition to your view, did you not? A. I don't recall whether he wrote a letter or not.

Q. And you knew of the fact that Mr. Burr, representing the Corporation Counsel's office, had advised against the granting of this application for the reason that in his opinion its granting might result in the consummation of the merger of the two companies, did you not? A. I think that is true. I don't recall just the grounds of his opposition.

Q. Doesn't it, then, Mr. Chamberlain, come down to this: That upon your advice the Public Service Commission has taken action which, to say the least, weakens materially its position in relation to the franchise which it was seeking in an action then pending in the court to recapture? A. No.

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Q. You make that as your deliberate conclusion, do you? A. Yes, sir.

Q. And doesn't it subject the city to the danger of a construction that may be placed by the courts upon the statutes which you construed contrary to the construction which you placed upon those statutes? A. I do not. I did not get that question.

Q. (Repeated by stenographer.) A. I do not think that the action of the Commission jeopardized the position of the city in the least.

Q. I did not ask you that question. A. I thought —

Q. I ask you a perfectly fair question, and all I want is a perfectly fair answer.

Q. (Repeated by the stenographer.)

Chairman Thompson.— I think you can answer that yes or no. That only asks for your opinion.

A. No.

Q. Isn't it possible, Mr. Chamberlain, that the Edison Company may file, if it has not already done so, a certificate of merger with the Secretary of State and with the County Clerk without any previous application to the Public Service Commission? A. No, it is not possible.

Q. It is not possible for them to do that? A. No.

Q. What is to prevent? A. The provisions of the statute.

Q. But suppose they disregard the statute and claim it is not applicable? A. The Secretary of State would have no right to file such a certificate.

Q. Supposing the Secretary of State accepts the certificate without question under section 15 of the Stock Corporation Law? A. I don't think it is proper to suppose such a case. He is supposed to do his duty.

Q. He is supposed to do his duty, but here is a statute which you say prevents the merger without application to the Public Service Commission, and which Judge Hatch says does not prevent the merger without application to the Public Service Commission. Now, suppose he did elect to take Judge Hatch's view rather than yours and files a certificate? A. I don't think the merger would be effective.

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Q. You know he might elect to do that, might he not, and file the certificate? A. I assume he might. He might make any election he pleases.

Q. And having elected to follow Judge Hatch's construction of the statute, and having filed a certificate, what remedy would remain to the city? A. The same remedy it has now.

Q. And what is that? A. I don't know whether it has any remedy or not now, but if it has any it would have the same remedy then that it has now.

Q. Has it ever had it? A. I doubt it very much.

Q. And did you doubt it at the time you wrote this opinion? A. Yes.

Q. And was it because you doubted it that you held as you did? A. No.

Q. Well, assuming that the Edison Company were to file such a certificate of merger, the city would be compelled, would it not, to begin an action in the courts to prevent the exercise by the Edison Company of the franchise owned by the Amsterdam Company, would it not? A. No, sir.

Q. It would, otherwise the Edison Company would undertake to exercise and continue to exercise those rights, wouldn't it? A. The city would go right on with its present litigation.

Q. And could it in its present litigation litigate the question as to whether or not the acquisition by the company of the 122 shares had put the company in a position where it might merge — would that question be in the litigation now pending before Delancey Nicoll? A. No, and I don't think it need to be. The city could litigate the question of its franchise irrespective of any merger.

Q. Could it litigate the question of the merger in that action? A. I don't think it would be necessary.

Q. And would any judgment or decree in the action now pending be effective to prevent the exercise of the franchise by the Edison Company, in view of the company, that in this litigation the question of merger was not one of the litigated questions? A. I should think it would be effective to prevent the exercise of the franchise by anybody.

Q. That is all. If the franchise is declared invalid, that ends it.

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Henry M. Chamberlain

Examination by Chairman Thompson:

Q. Of course you will pardon me. This is the first time I have met you in this investigation. You are in the counsel's office of the Public Service? A. Yes, sir.

Q. What is your title? A. Assistant counsel.

Q. What is your order of precedence in there? How many men ahead of you? A. Why, I don't know that I can say, except in order of salary. We are supposed to be on a par.

Q. Well, what is your order in salary? A. I get $5,400. There are two men ahead of me on salaries, aside from Mr. Coleman.

Q. How many equal with you? A. One.

Q. How much experience have you had at the Bar, how long? A. Since 1898.

Q. Do you devote all your time here? A. I have been here since 1907. I have devoted all my time to the counsel's office since that time.

Q. You do not have any private practice? A. Oh, no.

Q. How many lawyers are there in the office? A. I couldn't tell you offhand. You can get that from the records. I could count them.

Q. So many of them it is hard to remember them? A. No, not that.

Q. Do they keep you busy all the time there? A. Yes, pretty busy all the time.

Q. Keep all of them busy? A. I couldn't say that.

Q. How many hours a day do you have to put in there? A. From nine until five.

Q. Every day? A. Yes, except Saturday.

Q. Well, what is the nature of the work that the counsel have to perform? What do they do? You don't have any lawsuits, do you? A. We have some mandamus proceedings, some certiorari proceedings.

Q. You haven't had one of them in quite a while, have you? A. Mandamus proceedings?

Q. Yes. A. I have a couple of them pending now myself.

Q. To enforce orders? A. No, to compel construction of street railroads where companies have refused to construct them.

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Q. You have not had any mandamus or certiorari proceedings there to enforce the orders of the Commission in court, have you? A. I personally have not had.

Q. Do you know of any in the office? A. I think there may have been some.

Q. You were not familiar with them? A. I was not familiar with the details. They were handled by other men.

WILLIAM P. BURR on the stand.

Examination by Mr. Lewis:

Q. Mr. Burr, have you examined the provisions of section 15 of the Stock Corporation Law and the provisions of subdivision 3 of section 61 of the Transportation Corporations Law, and have you formed an opinion after such examination as to the power of the Edison Electric Illuminating Company to file with the Secretary of State and with the County Clerk a certificate of merger, merging effectively the two corporations, the Edison Electric Illuminating Company and the Amsterdam Light, Heat and Power Company? A. Before answering that, Senator, may I say a word personal to myself?

Q. Well, have you examined the law and formed an opinion? A. Yes.

Q. Now, you may state whatever you choose on the subject, Mr. Burr. A. I did not know until I heard Mr. Polk's testimony here to-day what was the reason for leaving the Law Department or for asking my resignation. It now appears that there being no objection to me officially, or as to my character, or in any other respect, that my activity in the matter of the New York Central Railroad was the reason for the Mayor advising the Corporation Counsel as to the desirability of making a change.

Q. You refer to the Eleventh Avenue litigation? A. I refer to the Eleventh Avenue track litigation. Now, that litigation I consider one of the best things I ever did during not only my official life with the city, but anything that I ever did since I was admitted to the Bar in 1879. I always felt and believed that I would wear Mayor Mitchel's dismissal as a badge of honor, and now I am certain of it, having heard Mr. Polk's reason for my dismissal.

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Q. Now, that is preliminary to my question. A. Now, I have examined all the law with regard to that. Of course you probably know that Judge Hatch is a gentleman with one of the cleanest legal minds in this State; he has no hallucinations or illusions about what he attempts to do for his client, and when he made an application for the purchase of this stock for the purpose of effecting a merger between the Edison Company and the Amsterdam Company, he meant exactly what he said. Now, then, the reason I opposed it, because the suit to restrain the city was brought by the Amsterdam Company and the Edison Electric Illuminating Company. The Amsterdam Company was the company who held the franchise which the city was about to rescind. The Edison Company was a stockholder in that company, and when we came to trial the first time they discovered that that situation was not tenable, that the company itself being in court, the stockholder was not a proper party plaintiff, so that some other reason, some other relation must be established, and by the amendment I have already referred to, they alleged the making of a lease in December, 1899, which was subsequently, the date of it, changed to January, 1900.

Q. That was the amendment to the complaint in the action? A. Exactly. That was the lease with regard to which no testimony was ever given as to the terms. It was hazy and nebulous, all that was known was that on a certain day the directors agreed to make a lease of the Amsterdam property and franchise to the Edison Company, the officers in both being the same, and with that situation confronting me I was satisfied that I could batter down that defense if the Public Service Commission held them steady to the starters at which I found them, and did not permit them any loophole of escape. Now, that condition I maintained for two years, as is clearly evident from the remarkable letter from Mr. Sheehan to Mr. Cram and Mr. Maltbie, and having ceased my connection with the department, then that activity began on that method, and the order was made. Now, I do not impute any improper motives to any one. I am glad the Corporation Counsel denies having advised it. I am certain Mr. Maltbie agreed to it on some misapprehension, because he fully understood the reason for the action of the city. Now, it may have been that he had been advised, as you have heard here this morning, that the act of the

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Public Service Commission allowing the acquisition of that stock did not hurt the city's case, but no one asked my advice upon that subject. They never came to me and I was supposed to be in control of it, and I have never heard, as I have already stated, anything in regard to the order that was made until I read of it in the paper when you commenced this investigation some little while ago. Section 61 of the Transportation Corporations Law provides that there shall not be a merger, nor shall there be a consolidation without the consent of the Public Service Commission. The language with regard to consolidation is somewhat vague, and may not mean exactly what was meant by the merger, but at all events, section 15 of the Stock Corporation Law provides that upon the acquirement of all the stock of a company, and the filing of a certificate with the Secretary of State showing that fact, that the possessor company becomes entitled to the control of all the property of the other company, including its property and franchise. Now, what has occurred to me, why didn't these gentlemen give the city the benefit of the doubt? Why did not they hold out and let Mr. Sheehan get his mandamus? They had been delaying us in the trial of this case before the referee, and a little delay further in their proceeding would not have hurt them. At all events, it would have been well for the Public Service Commission to have heeded, it seems to me, and have given the benefit of the doubt to the city, and refrained from taking any action. Another thought occurs to me as to the impropriety of their action That stock was absolutely worthless. The bonds of that company were absolutely worthless. They were not only worthless, but the Public Service Commission itself had declared them to be worthless. Now, if bonds of that company were absolutely worthless, why, the only way that you could express the value of the stock would be by zero with the rim removed. And why they should authorize the payment of a thousand dollars or a million dollars, the principle is the same, for the acquisition of such stock seems to be beyond comprehension, and certainly would not be a convincing fact to a prospective purchaser of any stock which was ratified or confirmed by the Public Service Commission. Therefore I believe that the fact that the thing was done, which constitutes a merger — you cannot have your cake and eat it, too — they gave them the consent to acquire the stock at a little expense.

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When you get all the stock of your company and file a certificate, that constitutes a merger, and having made a study for the city, was bordering on the absurd. It certainly was inconsequential.

Q. There is no force or effect against the Edison Company? A. Absolutely none. It only served to raise another defense, another embrasure that I would have to climb over before I could get the franchise for the city.

Chairman Thompson.— It made an excuse for making the order?

Mr. Burr.— It may have.

Q. Does that, in your opinion of the merger embodied in paragraph 2 of the order, have any effect whatever on the Secretary of State when asked to file in his office a certificate of merger of these two companies? A. I should think not.

Chairman Thompson.— Do you think they could merge without the consent of the Public Service Commission?

Mr. Burr.— Yes; that is, I think the Secretary of State would take the certificate, could take the certificate, and, as you pointed out a moment ago, in my opinion, if the Secretary of State did accept such a certificate, there would be nothing for the city to do but to commence an action to have such certificate declared nil, and thus put other obstacles in the way.

Q. And in the meantime the Edison Company would be in possession of enjoying the use of the franchise itself, would it not? A. Until it was stopped.

Q. Until it was declared void by judicial decree? A. Yes.

Chairman Thompson.— Give somebody else an opportunity of a life term as referee.

Mr. Lewis.— It seems to me to be desirable that there be read into the record the provisions of section 15 of the Stock Corporation Law so far as applicable to this situation. "Section 15. Merger. Any domestic stock corporation and any foreign stock corporation authorized to do business in this State, lawfully owning all the stock of any other stock corporation, organized for or engaged in business similar or incidental to that of the possessor

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corporation, may file in the office of the Secretary of State under its common seal a certificate of such ownership and of the resolution of its board of directors, to merge such other corporation, and thereupon it shall acquire and become and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation and in its name and without prejudice to any liability of such other corporation or the rights of any creditors thereof."

Mr. Burr.— That is the company, I understand the company acquiring the stock is not liable for the debts of the other company, unless it specifically so provides.

Q. I think you are wrong about that. I think that is not quite an accurate statement, Mr. Burr. A. There have been some cases of it.

Q. Now, what understanding — have you made an analysis of subdivision 3 of section 61 of the Transportation Corporations Law? A. I have made a pretty fair analysis.

Q. Have you made such an analysis recently? A. No, I haven't.

Q. I read into the record, Mr. Chairman, subdivision 3 of section 61 of the Transportation Corporations Law:

> "Subdivision 3. Subject to the permission and approval of permission of the Public Service Commission, when two or more corporations organized under this article, or under any general or special law of the State for the purpose of carrying on any business which a corporation organized under this article might carry on, may consolidate such corporation into a single corporation, and such corporation may with like permission and approval be merged with any other such corporation upon complying with the Business Corporations Law, relating to the consolidation of business corporations, and the Stock Corporation Law, relating to the merger of stock corporations."

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Q. Isn't it true, Mr. Burr, that this subdivision confers upon the Public Service Commission jurisdiction of any attempt to consolidate corporations rather than to merge corporations? A. That was my understanding of it.

Q. And isn't it possible that two corporations may consolidate without the one being the owner of all of the stock of the other? A. To consolidate, yes.

Q. Yes — now there was a state of affairs prior to the acquisition of the 122 shares whereby it was possible under the law for the Edison Company, with the approval of the Public Service Commission, to consolidate the Amsterdam Company, although it could not merge, because it did not own all the stock, isn't that true? A. Yes. It might also —

Q. And isn't it true, as appears from the record in this case, that the Edison Company did not desire to consolidate, and therefore sought to acquire the 122 shares so that it might merge? A. I presume that was.

Q. And isn't it true and fairly deducible from the record in this case that they did not care to consolidate because that could only be accomplished with the approval of the Public Service Commission, while if they could acquire the stock, they could merge without that approval? A. That is probably true, but at the same time this must be borne in mind. They were the applicants and they did apply to the Public Service Commission for the acquisition, and they said expressly that it was for the purpose of a merger.

Q. It did not imply that they required or felt they required the consent of the Public Service Commission for the consent to merger? A. No, not at all, and that is the very point Judge Hatch made at the time. And that he had in mind the merger appears very clearly from the continual controversy which we had during the progress of the trial.

> "Judge Hatch: Our claim is that the applicant has been dismantled, and the Amsterdam Company has long ceased to be in existence."

I am quoting from page 466.

> "Judge Hatch: The fact appears here that the Edison Company acquired the stock of the Amsterdam Company.

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The Referee: And took over everything, as I understand it.

Mr. Burr: Yes. Judge Hatch: And there were about thirty shares outstanding, of which there was some difficulty as to the precise title, and they acquired control of all the stock of the Amsterdam Company and have made an application to be permitted to acquire these outstanding shares from the Public Service for the purpose of merging the Amsterdam Company with the Edison Company. That application has been pending up there for some time. And my friend, Mr. Burr, goes in there and says we have a lawsuit down here, and so the Public Service Commission stops right there, and the only thing we can do now is to get a mandamus to compel them to determine it one way or the other."

That is the situation, and that appears here, and I don't know how many times it appears. That is a quotation during the progress of the trial, so that I had it in mind and he had it in mind, looking after the best interests of his client, as I was of mine, that he wanted a merger, and I did not.

Q. Do you know of any judicial construction of the two provisions of the statutes which I have read? A. No, I do not.

Q. Has there been any case within your knowledge in which those two provisions have been construed for the purpose of determining whether or not two electric light or gas corporations may be merged without obtaining the approval of the Public Service Commission? A. I am not familiar with any, yet I have not looked it up recently, and of course they are making new law every day.

Q. You heard Mr. Chamberlain's testimony that he does not know of any judicial authority? A. I have.

Q. In the absence of judicial authority, the city is confronted with the actual acquisition under the terms of the order by the Edison Company of the outstanding stock of the Amsterdam Company, which Judge Hatch contends entitles the Edison Company to merge the Amsterdam Company, and which Mr. Chamberlain contends does not entitle the Edison Company to merge the Amsterdam Company; that being so, the only way that matter can ever be determined is by an action after the filing of a certificate of

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merger to annul the certificate, isn't it? A. It would appear to me so.

Q. And until such action shall be brought by the city for the purpose of annulling the franchise and the merger, the Edison Company will be in a position where if it shall file a certificate of merger, it can continue to exercise all the rights conferred by section 15 until such a time as a judicial determination to the contrary shall be obtained? A. I think so. In fact, it is quite doubtful whether the Public Service Commission has any authority to impose terms or conditions. In my judgment, in other words, that the putting in, I think I have already said, of this clause, that it shall not mean a merger, would not stop or interfere or interrupt in the slightest degree the legal effect which followed from the acquisition, the accomplishment of the fact.

Q. In other words, the assumption by the Public Service Commission, whereby it sought to impose terms outside of the provisions of the statute, would be deemed to be a mere nullity, would it not? A. Yes. We had a similar matter come up in the matter of the Fifth Avenue Stagecoach line, for instance. There they applied for extensions. There they have a perpetual franchise. We had to have an act passed in 1913 in regard to the whole stagecoach situation. The Public Service Commission were required to approve, they being common carriers, of their system. The city went in and said, if you give them an extension give them only an extension for the term fixed by the charter — twenty-five years, and the Commission having consulted its counsel, decided that they had no power to impose any condition; that when they gave their consent, that it must be for the full length and term of the franchise under which the company operated.

Q. That was perpetual? A. Certainly, and so I think they are limited in the same way here.

Senator Foley.— Mr. Burr, what special retainers were continued in those matters that you had in the Law Department, as to your separation as a regular assistant?

Mr. Burr.— My retainer was very definitely specified. In fact, you asked the question of Mr. Polk, was this the policy of the city? He said it was the policy of Mr. Mitchel. The policy that

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I have stated here of the city as being fixed and settled, to recover for the benefit of the people franchises which have been long unused, or abandoned, arose from the opinion which I wrote in 1906, in which I held, and the Corporation Counsel endorsed the view, which I suggested, that the Board of Estimate and Apportionment had the power to rescind the franchise of the New York Electric Lines Company, because for twenty years it had done nothing under its franchise. And that is the question that went up to the Court of Appeals, reported at 188 N. Y., and again in 201 N. Y., and was decided in the October term of the United States Supreme Court by Mr. Justice Hughes.

Q. That was the renewal case? A. New York Electric Lines. Having announced that principle and the court having approved it, we then undertook to recapture railroad franchises, and we sought the joint action of the Public Service Commission, and we sought the action of the Attorney-General, and having collected the data and the facts, we obtained the assistance and the official action of the Attorney-General, and we recovered over seventy-five miles of railroad tracks in this city.

Q. Not tracks? A. Tracks and the franchises which they represented. And in Brooklyn, the B. R. T. have in years gone by, having established or claimed several extensions and only operated on one — claiming 10 per cent on one of operation construction, was available for keeping alive of all the others. We brought that to the Court of Appeals, and the Court of Appeals decided they had forfeited their right under the County and Suburban, and was an extension of the main line. We were in a fair way to bring order out of chaos by making a perpetual franchise, as it was a limited franchise, and good and proper returns to the city would be the order of the day. That was what he had in mind, and that was what I impressed on Mr. Maltbie, and that is why he held it up so long.

Q. And that policy was so as long ago as when? A. 1906. Mr. McClelland —

Chairman Thompson.— The only special retainer you had was in the Amsterdam gas rates?

Mr. Burr.— The only special retainer I had was in this very case in which I was removed, while I was removed in the midst

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of the trial. I want to do justice to every one. I am only here as a witness. But I was in the midst of this trial of the Amsterdam case. I was in the midst of the trial of another most important case. That was between the city and the Consolidated Electric Subway Company. Mr. Polk was shot on the 17th day of August, I think it was. While he was confined to his house, I thought I would give him some comfort, and I wrote him.

Q. After you had been removed? A. No, that was just before. I was going to tell you, five days before I was removed I told him I was in communication with attorneys on the other side, and they offered to reduce their claim against the city $1,500,000, and I felt confident I would be able to increase that to three million, and I would be able to reduce their claim against the city from eleven to seven million dollars. Five days after that I received my request for my resignation.

By Chairman Thompson:

Q. What case was that you referred to? A. That was the action of the city against the Consolidated Telegraph and Electric Subway Company, which was then pending before Hamilton Odell, George Gordon Battle and Edward H. Larkin. And I had submitted a final brief. It was remarkable to me to hear Mr. Polk say that he had made up his mind or had instructions in February to ask for my resignation, when just at that very time he had dismissed a special counsel who had received $40,000 in special fees, which I had been carrying on for four years before under my salary. It was very surprising to me that he should have appointed me to conclude that case, having in his mind that eventually he would have to ask for my resignation, but that case I concluded as far as it went. I submitted the final brief. It has not been decided.

Chairman Thompson.— Three referees in that case will take nine years, won't it?

Mr. Burr.—As I said, I was in the midst of the Amsterdam case May 19, 1914. I had received my congé May 7th, and I said:

> "Now, I ask on behalf of the city for an adjournment to enable my successor to take up the case where I leave it, I

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having received from the Law Department a request that we be given a month. The Referee: Mr. Burr, I know this is an important matter, and I will grant your motion, but I will be away from June to September, away from the end of June to September. Judge Hatch: If the Referee please, I desire to state that I very much regret the conditions which occasion this application, and I very much regret personally and otherwise Mr. Burr's severance as the representative of the city from this case, and I also desire to register upon the record that I think it is a mistake upon the part of the city to interfere in connection with this case, until its final determination and completion, in view of is present condition. The Referee: I cannot imagine the city having a more capable and faithful representative than Mr. Burr has been in this litigation. Judge Hatch: I join in that expression by the Referee."

and so I was caught in the midst of it, because of my resignation.

Q. What was this Death Avenue case? A. The Eleventh Avenue case rose out of an agitation which existed in this city for twenty or twenty-five years for the removal of the tracks on the west side. It was handed around from one to another in the Law Department for that time. The case came up squarely to me to ascertain what right the New York Central had in the street, and I made a very exhaustive study of that whole situation from the earliest days of the old Hudson River Railroad Company, and the New York Central, and the consolidation perfected in 1868 between the two.

Chairman Thompson.— That was the case where Senator Saxe passed a bill to remove the tracks?

Mr. Burr.— Martin Saxe passed a bill in 1906, an enabling act, enabling the city to remove the tracks, and it would have cost the taxpayers a hundred millions of dollars to get those tracks off, because he said we would be cutting our heads off, cutting us from New York city. Well, without going into too much detail, we had a referee appointed. The referee was appointed, D-Cady Herrick, and we went fully into the rights of the city, and the rights of the railroad in that location. I had a finding of fact that

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the operation of those tracks on the surface of the street was a menace to the life and safety of the inhabitants, and was detrimental to the growth of the territory adjacent thereto, two very vital facts. We went to the Court of Appeals, the Appellate Division held against us on one ground, and the Court of Appeals reversed that ground. Judge Cullen wrote an illuminating opinion, and on the authority of the Bristol case, which had been recently decided in the United States Supreme Court, held where a company's operation proved to be a menace such as this did, and dangerous to the use of the streets, that the company might be compelled at its own cost to remove the tracks, and to sink them, and make that place safe. So thereupon the Legislature passed an act, chapter 77 of the Laws of 1911, authorizing an agreement between the city and the railroad company for the purpose of removing the tracks at the expense of the railroad. Now, an agreement was prepared; it took some time.

Q. Did you prepare it? A. I did not. And the plans had to be approved and exhibited for a certain time before approval. Mr. Mitchel was then President of the Board of Aldermen. He had charge of this matter. A tentative agreement had been made and printed, and values set upon the property which the railroad company was to convey to the city, and property which the city was to convey to the railroad company. The question was raised by some taxpaying association as to whether the city owned the four and a half miles of land under water which extends from Seventy-second street in an irregular way to Spuyten Duyvil. Evidently the agreement proposed contemplated that the railroad had an absolute right to that land, by reason of its long occupation. But I claimed in this case that I speak of that it had gone into that land originally under a license, and could never acquire title against the licensor, which had been decided in the Aldrich case. And so when the taxpayers asked, the committee having this matter in charge, asked again the opinion of the Corporation Counsel as to whether it was true that the railroad owned that land under water, it came to me and I wrote that opinion, holding that that land belonged to the city, and so stated at a public hearing which was held on the 27th day of May, 1913, and from that date to this, to my knowledge, so far as I know, nothing else has ever been

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done with regard to that matter of the elimination of those tracks from the grade of the street. I have seen from time to time statements that the engineers are engaged on it, but the fact remains that the tracks are still there.

Q. What did Mayor Mitchel have to do with that phase of the situation? A. He was President of the Board of Aldermen. He had the matter in charge as head of the sub-committee. He was subsequently appointed Collector shortly after that meeting, and had subsequently been elected Mayor, and certainly has control of it at the present time, or since his election. Nothing, so far as I know, has been done about the matter since I left the office.

Mr. Lewis.— I desire to offer in evidence the opinion of Mr. Coleman.

Chairman Thompson.— We will suspend now until 2:30 P. M.

Mr. Chamberlain.— I should like to ask permission to go over those papers a little later.

AFTER RECESS

GILES W. MEAD on the stand.

Examination by Mr. Lewis:

Q. Mr. Mead, have you produced the oil contracts of the Kings County Lighting Company since 1910? A. Yes, the three original contracts.

Mr. Lewis.— I offer in evidence the contract of March 16, 1910, for a supply of 7,500,000 gallons of oil, at 2.475 cents per gallon.

(Received.)

Mr. Lewis.— I also offer in evidence a contract dated September 5, 1912, for the sale of 8,000,000 gallons of oil, at 4.18 cents per gallon.

(Received.)

Mr. Lewis.— I do not think I care to ask any other questions, Mr. Mead. Now I can have copies of these made and return to you.

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Chairman Thompson.— Put a statement on the record that we have them. That's enough for anybody — the Committee has contract so and so. They have been offered in evidence, haven't they?

Mr. Lewis.— Yes.

Commissioner Williams.— I would like to have Mr. Mead asked what led up to the making of these contracts. You have insinuated that they were contracts that the Commission should not have taken notice of, and I think while he is here, it would be but an act of fairness and justice to the Commission and to the people of the city of New York to know what led up to those contracts, rather than to have the insinuation that we have on the record.

Chairman Thompson.— The Chairman of the Committee is going to take this position: If you want them to know what led up to making these contracts, you should have put it in the record of this case when you made this decision.

Commissioner Williams.— I did not make the record. That was before other Commissioners. The man is here now, and I think in justice to all concerned, he should be allowed a chance to do that.

Chairman Thompson.—Are you appearing for the Kings County Lighting Company in this matter?

Commissioner Williams.— I am not appearing for the Kings County Lighting Company. I am appearing for myself.

Chairman Thompson.— The Chairman declines to go any further into the matter than the counsel, until the counsel gets ready to produce it. The counsel can take the case in his own way.

Commissioner Williams.— Of course I do not mean to suggest going out of the ordinary course, but I meant that while the witness was here, he being a man from out of the State evidently, it might not be amiss to take it up.

Chairman Thompson.— I am frank to say anybody under this record should have known more about these oil contracts, and I think it is a responsibility of the Commission of the First District that it does not show it.

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COMMISSIONER WILLIAMS on the stand.

Examination by Mr. Lewis:

Q. Commissioner Williams, I asked you to come back to-day for the reason that in studying the record, I am impressed with the fact that the 95-cent rate proposed by your opinion to be allowed for the period beginning December 1, 1915, and terminating December 1, 1916, covers substantially the period of time covered by the existing public lighting contract with the city of New York, and if it shall become effective, will insure to that company a 95-cent rate during the balance of the period of the lighting contract — at its expiration the lighting contract will have expired and upon any application for a rehearing, or a further consideration of the rate to be paid by private consumers, it must, I think, be apparent that the Kings County Company will argue that because of the probable reduction in the cost of street lighting and the consequent reduction in the earnings of the company, the 95-cent rate can be justified for the future, after December 1, 1916 — did that fact occur to you at the time you were considering your opinion? A. Well, I can't say that it occurred to me. I was under the impression, I don't know how I got it, that the lighting contract expired some time in September, and I thought of making it the 1st of December. First my opinion ran to November, but it was so long in getting it transcribed and getting the part of it relating to going value, I wanted to talk over with Judge McCall whether or not he thought there was anything in it that reflected in any way on the opinion of the Court of Appeals, in not allowing things that they said we must take under consideration, and in preparing that part of it, ran over so, that instead when the 1st of November commenced, I suggested the 1st of December. But while I say in my opinion that there is that lighting contract, and that high price of oil, that those things in all probability will be ironed out by the 1st of December, so that the Commission could make an order which would be fair and just all around, or at least get the evidence in shape so that an order could be made.

Q. Well, you regard the decision as you have prepared it as fair and just all around, don't you? A. I do as the conditions now exist, and as they will exist for practically that period, perhaps not entirely.

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Q. And your determination as to the proper and just rate at 95 cents is made after consideration of the fact that during the period covered by the rate which you have determined is just and proper, the company will be drawing from the city treasury for street lighting under its present contract a very much higher rate than it is likely the company will draw after the expiration of its contract? A. The company claims it is entitled to that higher rate, but as I told you yesterday —

Q. That is the matter that is in the courts? A. It is in the courts and it is disputed whether they will or not. But you notice this, Senator, all the way through the case, as Commissioner Maltbie had it, and the opinion as prepared by counsel, after Commissioner Hayward got through with it, we have tried to divide the cost of the street lighting from the cost of commercial lighting, and tried to keep it separate in that way.

Q. But you reached the conclusion that in order to be able to return 7½ per cent upon the appraised value of the property, it is necessary that the company earn and be paid 95 cents a thousand cubic feet from private customers and the present rate for street lighting? A. No, we have not determined that for street lighting.

Q. Well, doesn't that follow as the result of your fixing the rate? A. I don't think so. I don't think so.

Q. Well, stop and think for a minute. You have taken the probable earnings of the city contract at the contract price, have you not? A. Yes.

Q. You have said that in order to produce 7½ per cent return upon the value of the property, as appraised, it is necessary to charge the private consumer 74 and a fraction cents per thousand feet — A. 94, I think.

Q. 94 and a fraction cents per thousand feet?

Chairman Thompson.— Is the Public Service record showing the inventory that was taken of the physical property of this company available here?

Mr. Williams.— It is in the record.

Chairman Thompson.— Is that part of the record in the room?

Mr. Williams.— That is the reproduction cost that I went into, less depreciation.

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Chairman Thompson.— I don't care what it was; I just want to get that record.

Mr. Williams.— That is practically what it is.

Chairman Thompson.— Is it here?

Mr. Lewis.— I haven't seen it.

Commissioner Williams.— The whole thing, you mean?

Chairman Thompson.— I mean the whole inventory that amounts to three million odd dollars.

Mr. Williams.— Mr. Hine says it is very voluminous, but he will get it. Do you want copies of that inventory, showing how it was taken? Suppose we produce it at the next hearing.

Chairman Thompson.— I would like it this afternoon.

Mr. Williams.— Send for it. (Speaking to Mr. Hine.) I would like you to stay here. I am very glad that the Senator asked for that, because that will show whether it was gone into thoroughly or not.

Chairman Thompson.— Well, that record that I have sent for, will that give your statement of how you arrived at the cost of running the institution?

Mr. Williams.—(To Mr. Hine.) Will that give the way you arrived at the way of running the institution?

Mr. Hine.— The appraisal figures?

Chairman Thompson.— Yes. I would like the details of it.

Mr. Lewis.— The details are there.

Chairman Thompson.— Is that the detail?

Mr. Williams.— That is the summary.

Chairman Thompson.— I want to see what work you did.

Mr. Hine.— I did not do that. That sheet was not prepared by me. That was prepared by the accounting department.

Chairman Thompson.— I am going to be frank with you. I am going to find out how much it cost the city to try this case before

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I get through. If somebody can give me a good close estimate of what it cost to try this lawsuit for five years.

Mr. Williams.— It was done with the regular force of the Commission.

Q. (Last question by Mr. Lewis repeated by stenographer, as follows: You have said that in order to produce 7½ per cent return upon the value of the property, as appraised, it is necessary to charge the private consumer 94 and a fraction cents per thousand feet?)

Q. Isn't that so, Mr. Williams? A. What was the question? I thought I had answered it.

Q. (Read by stenographer.) A. Mr. Hine tells me that in the original case where Mr. Maltbie wrote the opinion, that the allocated — the cost of the street lighting and of the commercial lighting, and it was figured in that way. I know that that method of figuring the reproduction cost.

Chairman Thompson.— That allocation is a new word. This is the second time I heard it. What does that mean?

Mr. Williams.— We distribute — that we charge into one account what should belong to that account and to another one what should belong to another. The wholesale contract has allocated to it the certain proportion or proportionate part of the production charge.

Chairman Thompson.— You locate parts of it where it belongs?

Mr. Williams.— Where it belongs.

Q. I have my figures that I wanted, Mr. Williams, and I can straighten this matter out. A. Just a minute. This method of finding out what amount the company should be allowed a return on, and the method of finding the depreciation, was specially approved by the Appellate Division, as I remember it, in this particular case, so I did not go back of that at all. I told them to carry that. Exactly what I said to Mr. Semple was to carry it right straight down on Commissioner Maltbie's theory, which had been accepted, and bring it down to date as far as that was concerned.

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Q. Now, Commissioner Maltbie disregarded the going value, did he not? A. Yes.

Q. And you disregarded the going value? A. Well, I did not disregard it.

Q. You made no allowance for it? A. I made no allowance.

Q. And Commissioner Maltbie made no allowance for going value? A. Commissioner Hayward here the other day, the first time I heard him say that in that 7½ there was some allowance for going value from something he saw in the opinion.

Q. What did you have in your mind? Did you intend to allow anything for going value? A. No; not at all.

Q. Commissioner Maltbie did not intend to allow anything for going value? A. Commissioner Hayward thinks he did, some slight allowance of an indefinite amount. He thought the 7½ would cover any going value.

Q. Leaving it that way, Commissioner Maltbie may have allowed for going value, and you did not? A. I don't know whether Commissioner Maltbie did or not, from reading the opinion.

Q. Put it this way: Commissioner Maltbie may or may not have allowed for going value, and you did not? A. I did not.

Chairman Thompson.— You passed on the question of going value, and found there was none?

Mr. Williams.— In my opinion.

Chairman Thompson.— You considered the question of going value, and found there was none?

Mr. Williams.— Yes, and state my reasons for it.

Chairman Thompson.—And Maltbie did not make any conclusion or finding on the subject?

Mr. Williams.— Yes, sir.

Q. Notwithstanding the fact, then, that Commissioner Maltbie may or may not have allowed anything for going value, yet Commissioner Maltbie established a rate in his decision of 80 cents, did he not? A. Well, I think it was finally to run down to 80 cents.

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Q. While you make a flat rate of 95 — 95 for the time specified?

A. That is what it figures.

Q. Now, can you in a few words give us the reason why there should be an allowance of 95 cents for the period of twelve months, beginning December 1st, and having in that decision disregarded the going value absolutely and made no return for that, while Commissioner Maltbie made a rate of ultimately 80 cents, and may in that rate have included something or other for going value? A. Yes, I can tell you.

Q. In a few words? A. In the first place, the price of oil was the largest element.

Q. Now, how does that price for oil count on a thousand feet? A. You contrast it with the amount that the Consolidated Gas finally paid.

Chairman Thompson.— Contrast it with their next previous contract of 4.18 — that is all you can contrast it with.

Q. Wait a moment before you do that. What rate was being paid at the time Maltbie was considering this matter?

Chairman Thompson.— 4.18 to September, 1912.

A. In 1911 they were paying 2.475 per gallon. This contract expired in 1912, and then they paid 4.18 in 1912. But at the time of Commissioner Maltbie's decision they were paying 2.475.

Q. Well, take that figure and ascertain what the difference would be due to the increased price in oil per thousand cubic feet. A. That would be 2.1, which would be over 8 cents, between 8 and 9 cents.

Q. That would account for 8 or 9 cents of the difference in the rate, would it? A. Yes.

Q. Well, now taxes of the company have been reduced? A. Slightly, yes. It tells on there.

Q. Well, quite materially? A. Yes.

Q. 1911, the taxes were upwards of fifty-six thousand, while in 1914 the taxes were forty-nine thousand? A. Yes.

Q. A substantial reduction there? A. Well, I was telling you the increase. The property upon which they were entitled to a

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return increased more rapidly than Commissioner Maltbie figured it would in his previous opinion.

Q. And then you allowed for a larger cash investment? A. We allowed for the actual increase in the amount that they should be allowed a return on, and then there was a larger — you notice on that blueprint the large one, the cost of labor increased. There were a number of increases which you will find in all probability more than manufacture.

Q. Of course every time that enters into the cost, at material increase from 1911 to 1914, as shown by this schedule? A. Yes, sir.

Q. And this schedule, as I understand it, is made from the reports filed by the company itself, with the Commission, and no effective method has been employed by the Commission to check over these figures and ascertain whether these are the actual cost or whether they may not have been padded? A. No, I think you are wrong. The books are absolutely checked and they are cross-checked. I will bring them here, if we can get them this afternoon, at the next session everything that Dr. Weber's department did. I want to say that that same department of Dr. Weber's is thoroughly hated and by every corporation in town, because of the way they do check and take care of these very matters. You have asked me to tell the difference. There is one other thing that enters in it, but just the relation or amount I can't tell. It developed on the argument of this case that the actual loss in leakage and condensation was over 14 per cent; that the average was over 15 for this company, and Commissioner Maltbie only allowed 11. I thought in preparing an opinion here that we were bound by the actual — where we had the actual loss, rather than by an estimate which we might well make, if we did not have the actual loss, and I took 14.3, which was the actual and which will account for every bit of the difference.

Q. Now, you took that from the records of the company itself and not from any investigation or reports made by any one in the employ of the Public Service Commission? A. How in the name of wonder could we get it from any other source. I don't want it said here in the morning papers that Williams admits that he took the records of the company rather than the Public Service Commission.

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Q. Well, you did not have — A. We could not have, Senator, unless we kept a man right there at the works.

Chairman Thompson.— I am not going to have arguments between counsel and witness, unless counsel wants it, and if counsel asks a question that you have to obey your oath and answer from which the morning papers can deduce such a statement. They are entitled to it, and so I am going to still insist that you answer the question.

Q. Isn't it a fact that the Commission might have ascertained the actual loss by taking the readings of the meter at the holder — I assume that is where it is located? A. Certainly.

Q. And comparing that reading with the aggregate of gas billed to the consumer, as shown by the bills themselves, and wouldn't it have been possible for the Commission to send a man with an adding machine into the office of the company and required the production of the bills for certain months, and add those sums for those certain months, and compare them with the readings of the meter preserved by the company, the meter installed at the holder? A. Mr. Hine tells me that is what is practically done.

Q. He did it? A. Yes. That is, we did not keep a man stationed at the holder all the time, but they have a meter at the holder, and the readings of that meter are taken, and the combined readings of the meters of all the customers to determine the combined loss, with the reading of the street lamps, which is determined lumply, so much a night.

By Chairman Thompson:

Q. When you determined that loss, what did you do, credit the company with, give them more of a rate or less than a rate? A. They make that much more and sell that much less.

Q. How does it affect your decision on the rate? Does it increase your rate by finding this loss, or decrease your rate? A. It increases. The customer only pays for what finally goes through his meter.

Q. If you find this 14 per cent loss, does that make you give a higher rate to the company to charge the consumer? A. Yes.

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By Mr. Lewis:

Q. Now, the company uses for its own purposes a substantial part of this 14 per cent, doesn't it? A. Mr. Hine says that 14 does not include that. That is taken care of separately.

Q. But your schedule contains in the table you have prepared, and appears at page 29, 14.3 per cent used and unaccounted for? A. What page is that?

Q. Page 29 of your opinion. A. I have only 23 pages here.

Q. I will show you this. A. That is right. That is part of their operating expenses, of course. The part they use. It is used for the manufacture of gas like they burn around the place, the same as the coal would be or any other.

Q. Have you any data upon which to base a determination as to what part of the 14.3 per cent is actually used by the company for its own purposes, the same as any other customer? A. I don't know whether there is or not. It all goes into production expense.

Q. I know, but if the company is a customer of itself, and uses 5 of that 14.3 per cent, then the company ought not to be allowed for more than 9.3 per cent on it? A. Why, yes, because it would use it in the production of their gas and to work by nights.

Q. How do we know it has not been charged into production expense here without having been given any credit for it? A. I don't think you will find it, in that list of production expenses. You will find the fuel, but not any other gas.

Q. In production expense, Commissioner, I am unable to find any cost for gas manufactured by the company and used for its own purposes, nor am I able to find any item for general expense or for administration, or anything of that kind. In other words, I think my statement holds true that if one-third of that 14.3 per cent allowed for gas used and unaccounted for is actually used by the company and not paid for by the company as any other customer would pay for the amount used, then the allowance for used and unaccounted for gas should be reduced from 14 by one-third, shouldn't it? A. Well, if you do that, it would mean that you would cut out of the production expense, which is only 33 1/3 cents, that item practically, and give the company a profit on the gas that they were consuming themselves, and put it back to them at 90 or 95 cents, whatever the rate was.

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Q. I don't know whether they have included that in their production expense or not; it does not appear. A. No, it is not included, and it is very much against the advantage of the company to just take it out of the production, which would be 33 1/3 per cent, rather than to have the company charge up the larger amount.

Q. Well, suppose the company had not lost anything in the way of gas by condensation or in transmission, and had simply used that amount of gas in the production of its output. Should it or should it not be made a matter of book account? A. Well, I think it would be to the company's advantage to make it a book account, wouldn't it, Mr. Hine? Mr. Hine tells me there is a record showing every bit that they used. They have separate meters and tell exactly what is used.

Q. Is it made a matter of book account by the company itself? A. It is reported separately, Mr. Hine says.

Q. Is it included in the earnings, as well as charged for in the expense? A. No, he says not.

Q. Now, I call attention to the fact, which we have gotten away from temporarily — A. Mr. Hine says they do not bill themselves for the gas at all.

Chairman Thompson.— They charge that to the customers?

Mr. Williams.— No. Just the contrary.

Q. I called attention to the table in your opinion which I commenced to discuss with you some time ago, and from which we have gotten away. You have found in the table, that it will be necessary to exact from the commercial customers a rate of 94.65 per thousand cubic feet in order to make a return of 7½ per cent upon the valuation, have you? A. Yes. That is, that part of the valuation which gives property allocated to commercial purposes, commercial sales.

Q. Now, you have found it will be necessary to obtain a rate of 90.88 cents for the gas used other than for commercial purposes, have you not? A. No. That would mean that if the contract with the city was to go on and commercial gas was to be paid for at the $1.75 rate.

Q. Not commercial? A. The city gas for street lighting, that it would amount to 90.88.

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Q. Well, it does go on for a year, doesn't it? A. I don't know whether it does or not. By the terms of the contract which they are trying to upset in court, it is, I am told — goes on until December.

Q. Well, might it not have been justifiable under the circumstances, in view of the fact that the contract has substantially another year to run, or had at the time you were preparing this opinion, to fix the rate at 90 cents on the theory that the revenue from the city, a 90-cent rate would have been sufficient to pay the 7½ per cent upon the appraised value? A. Well, I can't state any further than I have.

Q. That would seem to be so, wouldn't it? A. I can't state any further than I have stated, that that was separated right straight along, and while the contract was spoken of on all sides, it was spoken of as a separate proposition. It was not considered as being —

Q. Well, you have allowed a revenue from the street lighting, of $147,000, have you not? A. Yes, that is what it figures.

Q. Now, you have added to that miscellaneous revenue of $12,000? A. Yes.

Q. And you expect a revenue of seven hundred forty-four thousand from commercial sales? A. No.

Q. What? A. Seven hundred thirty-two thousand.

Q. Seven hundred thirty-two thousand from commercial sales, and the group of those three items of revenue will enable the payment of 7½ per cent upon the appraised value if the rate were 90.88 cents per thousand cubic feet, would it not? A. No. Mr. Hine calls my attention to the fact that if the rate was reduced from 94.65 to 90.88, there would be only seven hundred three thousand nine hundred eighty-eight received from commercial sales.

Q. Will you state that again? A. That if the rate was reduced from 94.65 to 90.88, that the necessary revenue from commercial sales would be seven hundred three thousand five eighty-eight, which is the amount just above the ninety. This table is rather obscure.

Q. Well, the seven hundred three thousand five hundred eighty-eight would give a rate of 90.88, would it not? A. Yes.

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Q. Then, if it were reduced, then your seven hundred three thousand five eighty-eight dollars of income would give you a rate of 90.88 cents? A. Yes.

Q. And that would be 7½ per cent upon the appraised value? A. On the entire property including the street lighting. As I said before, I would rather somebody else would explain this table.

Q. I know, Commissioner, but you have made yourself responsible for this opinion and the table which it contains, and as a Public Service Commissioner, it is up to you. I don't say this in any unkind way, but simply for the sake of the fact in the record. It is up to you to justify the determination which you have arrived at in your decision. Now, so far as I can see, if I am wrong I want to be corrected, because I do not want to do anybody an injustice — now, so far as I can see, you have allowed a rate of 95 cents for a period of twelve months in order to pay 7½ per cent on the appraised value, whereas a rate of 90.88 cents per thousand cubic feet would have enabled you to pay 7½ per cent on the appraised value, and that I think fairly appears from the table included in your opinion, which you have submitted for the approval of the other Commissioners, now, isn't that so? A. Isn't that the same way it was divided in Commissioner Hayward's report?

Q. I don't know; I haven't examined his report. A. I don't know.

Chairman Thompson.— Does that make you feel any better, to criticize Commissioner Hayward?

Mr. Williams.— I do not criticize.

Q. Do you agree with my conclusion? A. I agree with your conclusion, if you are going to take street lighting and figure out the whole thing, that it would make the figures that I have put in this table.

Q. And that is that a rate of $147,000 from street lighting, plus a rate of 90.88 for commercial lighting, would produce an amount of money sufficient, after deducting all operating expenses and cost of production, to enable a return upon the value of the

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property as appraised of 7½ per cent? A. Yes, that is so, if the street lighting went on at that rate.

Q. Well, it is going on for twelve months? A. No, it isn't. It is in court. The company claimed the right to charge it, and the city have very good reason, and if I am any judge, the city will establish that the contract with the city was terminated by the Legislature.

By Chairman Thompson:

Q. Did you find that in your opinion? A. No, I do not find that.

Q. Did you pass on it at all? A. It has nothing to do with it at all.

Q. You found so far as this opinion is concerned that the contract with the city is good? A. No, I did not.

Q. I wish you would point to your opinion where you say the contrary. A. I did not say anything about it. It is not up to us at all.

Q. I want to ask you why it is you go to all this cost and expense about finding this loss of gas. I may be small here and may be dense — you figure in your opinion the amount of gas that may be sold next year, based on what they sold last year, plus what you could prophesy it would increase next year? A. Yes.

Q. And then you went and added this 14 per cent that this young man finds for you, and then you go out and base your rate that you find made on the actual sales that you thought would be made next year. Now, I wish you would explain to me why it is necessary to have this young man and all his assistants running around over there and making expense for the city, and to find this expense and delay the proceedings on that account? A. Because we have got to figure the cost to the company of manufacturing the gas, and if it costs more to manufacture one thousand feet than to manufacture —

Q. It is easy to find the cost of making gas? A. Not per thousand feet, unless you know how many —

Q. You can find out the number of thousand feet actually marketed, can't you? A. Of course you can find that, but you cannot find the proportion.

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Q. What difference does it make about the proportion? A. It costs them just as much to manufacture this gas that is wasted as it does the gas that is sold.

Q. But all that has been accounted for — you give them credit for everything they have, for labor, material and overhead expense and everything that costs to produce all the gas that is produced? A. Yes.

Q. And therefore you gave the cost of it all and therefore you charge back the amount they received? A. Wouldn't you check up to see the amount they manufacture?

Q. I was asking you that question — isn't that true that you can charge back to them all they received from the customer? A. Charge back to them?

Q. In fixing the net amount that they can earn, and credit them with the cost of making the entire output of gas, whatever they make, don't you? A. Certainly.

Q. Sure you do — you charge in there all the labor they employ for any purpose? A. Yes.

Q. And you charge all the material they use for any purpose? A. Yes.

Q. And you charge the overhead expense for all purposes? A. Yes.

Q. And you also charge the interest on the money invested and all that for all purposes of the company? A. No, we do not take into consideration whether they have any stock or bonds or what they have got.

Q. I know, but you give them credit there for everything they spend in their operations? A. Supposed to.

Q. And as against that, in order to find the net profit, you charge them only with the amount actually received from customers, don't you? A. Yes, aside from the street lighting.

Q. Well, that street lighting is a customer? A. The city is a customer.

Q. Then the answer is yes? A. Yes.

Q. And the difference between those two amounts will show actually the net amount the company receives? A. Yes.

Q. Regardless of whether they lost any gas or did not lose any gas? A. You may figure it that way.

Q. Isn't that true? A. I don't think that is the way.

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Q. What difference does it make in the profit? A. I think that might be true if you take your hypothesis the way you take it.

Q. I am not taking hypotheses; I am taking facts. A. But if you take the facts as they are on that sheet that Dr. Weber prepared, you will find it is necessary to show, in order to show how much it has cost the company to produce it per unit, you have got to show how many units were produced.

Q. In order to make Dr. Weber's sheets — in order to keep Dr. Weber busy, he has got to have some figures, but how does it help you in finding the net profit of this company? A. I think it is very material.

Q. There is only one difference in what they actually pay out and what they actually receive. A. I think a Commissioner who has spent many years —

Q. I don't care about Commissioner Maltbie. A. My idea is it is —

Q. The net profit is the difference between the amount actually paid out and actually received? A. Yes.

Q. And that is something we learned twenty-five years ago up the State when we went to the old country school house? A. Yes.

Q. And we could arrive at that without the necessity of these engineers figuring on the cost of gas? A. We may have; I think so.

Q. I will grant you, you couldn't take three or four years to make one of these decisions if you go into figures of this kind. A. I have brought Dr. Weber, who is probably the foremost man in this country. I stand absolutely on what Dr. Weber has done. He has made his figures right.

Q. He has made his figures right, but what good are they? A. The courts have upheld him in every case we have had before them, except one or two.

Q. Did you take into account this company did not make anything except gas? A. They do have certain residuals.

Q. I asked you what you took into account. A. I took into account they get about a cent a thousand cubic feet — a little tar is all. I said yes with the exception of a little by-product like tar.

Q. Did you take into account tar? A. Yes.

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Q. Where is it? A. Residuals produced, credit in 1914, $9,553.

Q. What did you assume they would credit next year? A. It was not — that has not changed perceptibly since 1913. It is a little more.

Q. What did you take into account it would get for the sale of tar next year? A. Practically the same.

Q. Where is it in your opinion? A. It is not in the opinion.

Q. You have not calculated it, or have you? A. Yes.

Q. Where is it? A. It is indicated in the forty thousand increased output; included in the forty thousand increased output.

Q. Increased output of what? A. The larger the output of gas, the more manufactured.

Q. You did not credit anywhere in your opinion and charge to them what they might get from the sale of by-product like tar? A. Only as it reduced the operating expense.

Q. Where is it marked in your opinion, it reduces the operating expense? A. It is not marked in the opinion at all.

Q. There isn't anything allowed in this opinion as far as you have made it, for receipts of this company for by-product? A. No, you are wrong.

Q. Where is it? A. It is included in the number of cents per thousand feet for operating expense.

Q. Where is the record that shows that? There must be a record in your Commission so I can understand how you get at it? A. If you take this sheet.

Q. That is your old sheet. I want to know where it is included in your new rate. A. That is the new rate sheet — the rate based upon the 1914 and 1913 and 1911 sales, makes a credit of one cent towards that. It would be 34 instead of 33 plus, if it was not for that credit.

Q. That 34 shows cost in making gas production? A. Yes.

Q. Why do you put it in in that way? Why don't you show the by-product in your figures somewhere? A. It shows on the other sheet.

Q. Separate? A. Yes.

Q. Where is it? A. Residuals produced — credit. Has run as high as ten thousand. These figures on the smaller sheet are

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reduced to cents per thousand feet of gas. Those figures are taken and reduced.

Q. Did you take any testimony in your record on that? A. I don't know whether there was any testimony taken or whether that was the figures furnished by the engineer. It was an exhibit on behalf of the Commission, I am told, in the case, although I don't remember.

Q. I would like to see that exhibit. Did they come from the company, or where or how? A. Have you got that, Dr. Weber — anything on that residual here?

Q. Don't you know, Commissioner, about these by-products, Commissioner, without asking this question? A. Why, no, Senator, I do not.

Q. Didn't impress you at all? A. No more than I had for the record the exhibit for the tar. That's how they impressed me.

Q. Don't they make something besides tar as a by-product? A. I don't know about that.

Q. Did you inquire into it and have it in your mind in writing this opinion? A. No.

Q. Don't they make ammonia? A. I don't think they do.

Q. Don't know whether they do or not? A. I never heard that they did.

Q. Isn't it a fact that some of these gas companies pay their entire expense of maintenance out of the sale of their by-product? A. Some coal gas companies may, where they are manufacturing coke, but I am not sure of that even.

Q. Have you any information on the subject where you are willing to go on record? A. Not that they pay all their expenses.

Q. As to the amount they actually received, haven't you very well-defined notions about that? A. No, we have no coal gas companies in our jurisdiction.

Q. How long have you been a Commissioner? A. This was a coal gas company years and years ago.

Q. How long have you been a Public Service Commissioner? A. Since 1912, since the 1st day of April, I think. I want to correct a statement that was made here as to any other companies charging 95 cents. There is another company in the Thirty-first Ward of Brooklyn that is charging 95 cents.

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Q. Do you want us to take that case up too? A. I haven't made any such request. I was asked the other day if there was any other company charging 95 cents, and that is charging 95 cents, I find.

Q. Mr. Maltbie took that up in going through his opinion, din't he? A. I don't know. My impression was the other day when Miss Loeb mentioned it that there had been a sliding reduction in that case, but I find 95 cents is the rate now. That is the Thirty-first Ward.

Q. Now I want to take up another angle of this thing that occurs to me. Commissioner Maltbie gave a great deal of study to this case, didn't he? A. I assume he did.

Q. And he wrote a very exhaustive opinion on it? A. Yes, he did.

Q. And from that the decision was made that was concurred in by the Commission? A. Yes.

Q. And from that an appeal was taken to the court, and the court found that the decision was right, except it had not considered the question of going value; isn't that about a fair statement of it? A. That is about it.

Q. Now, when this case came back and you found there was no value to be added on account of a going value, is that true? A. That is right.

Q. Now, isn't it a fact that the statement was made at the outset of this hearing, after the case came back it was back only for the purpose of determining the question of going value? A. I am sure I did not hear any such statement made.

Q. Didn't you make that statement yourself? A. That it was back only for the question of going value?

Q. Yes. A. If I did, I misstated it, because we certainly had to bring it down to date, 1910. That would have been true, if it had not had to be brought down to date.

Q. You could have found very readily when this case came back in 1913 the fact that there was no going value from the record? A. Either from the record or evidence that was put in subsequently, I assume. I have found that.

Q. Then you would not have had to wait if you had confined yourself to that, you would not have had to wait until this company could have made an oil contract at a higher price, so as to

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affect this decision? A. I did not have to wait. I was not a sitting Commissioner.

Q. But the case did wait and this high contract for oil was made while you were waiting? A. I don't admit they waited in the sense you put it.

Q. While the case was pending, this high contract for oil was made? A. The delay was made that I think was perfectly justified to handle the case.

Q. Well, that happened, anyway? A. That happened.

Q. And you have not found any different condition on which to fix a rate, except this oil contract, than Mr. Maltbie had before him? A. Yes. I explained to counsel what those were.

Q. Now, I notice the statement at 1744 of the record, made by Mr. Semple — who is Mr. Semple? A. He is the counsel had charge of the case for the Commission.

Q. One of the lawyers employed in your Commission counsel office? A. Yes, sir.

Q. How much does he get a year? A. I think $8,000.

Q. I notice on page 1744 he thought the company might have lost money on an 80-cent rate. Do you remember his making that statement to you? A. I don't remember his saying that. He might have said that.

Q. Did that affect you in making your decision? A. Not at all.

Q. Did you think from what you heard of this case that Mr. Semple tried as hard to represent the people's side of this case as he might have if he had had a private retainer as a lawyer? A. I certainly did.

Q. You thought he tried it pretty hard? A. I thought he tried it to the best of his ability.

Q. Then why in the world do you think he did not prove up these gas contracts in this litigation? A. Now, I will tell you about that. I assume that Mr. Semple knew this: That the Consolidated Gas Company in New York, in their 1914 contract — what was about the date of it? — the Consolidated Gas Company with its enormous quantity of gas consumed, had agreed to pay 5.035.

Q. They sold gas at 80 cents, too, didn't they? A. They had agreed to pay that. The price of this gas, I am also informed,

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went as high as eight cents in that year, and they contracted with the Standard Oil Company to pay that price over five cents.

Q. That is not answering my question. I do not think you ought to answer it from anything except this record. A. You have asked me why Mr. Semple did not put in the evidence and I am telling you why he did not put in evidence, as I understand it. As I understand, the reason he did not go into that further, if he did not go into it far enough, you think, the Consolidated Company of New York were paying over five cents, the Brooklyn Union Gas were paying over five cents, and I am told it went as high as eight cents.

Q. Read the rest of it. A. The Bronx Gas and Electric had been buying at three cents. The report of 1913 showed that they then got it when that was at 3.5. Now, the Brooklyn Union Company and the Consolidated Company, by reason, I am told, by the large holdings of Mr. Rockefeller in both of those companies, were able to get their contracts cancelled, and those contracts were cancelled, and contracts were entered into in June at the lower price of 3.035 cents in one company, and 3.045 cents in the other company.

Q. The Consolidated was made in June? A. The Consolidated was made in June, and the other one at five cents, was made earlier in the year and they were able to get out of their contracts earlier in the year. And as I remember, this company testified that they had tried to get out of those contracts and were not able to do it.

Q. Those gas contracts made during those months show all kinds of differences from three up to five cents? A. Yes, sir.

Q. And shows that the Standard Oil Company was selling oil at any old price they wanted to make, there wouldn't any of these witnesses testify to a market value? A. I understand, and want my testimony to understand that there was no such thing as market price of this oil.

Q. They would not give you a market price, but you would permit them to come before you and let some young man tell you what he told some man somebody had told they could have oil for, didn't you? A. No, I don't remember that.

Q. At page 1524 of the record and before it and afterwards, shows several pages of testimony taken of men who were agents of

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oil companies, telling the verbal quotations they made — you knew as an ordinary citizen it did not hurt anybody to make a verbal quotation, if they did not act on it under the contract? A. I think that is a fair representation of value.

Q. You took that into consideration, did you? A. No, I won't say I did.

Q. Do you think it is good evidence what some man might have told another when there was not any contract on it? A. Not what one man told another.

Q. That is all these witnesses testified, according to this record, that they did not know the market value and did not produce any actual contracts or salesmen. A. I cannot make that any stronger than I have made it.

Q. You think Mr. Semple tried this case pretty hard when he left the record of these oil contracts the way he did? A. I will say all cases that I know of that Mr. Semple tried, he tries in the best interests of the people of the city of New York.

Q. Do you know what this company has earned from the time it started? A. In my opinion you will find a statement of what it has paid.

Q. Well, percentage of return — made a 7 per cent return ever since it started — the record so shows it? A. Yes.

Q. And it also shows that at one time — on page 1749 of this record, shows they charged as high as $2.25 a thousand. I think the attorney stated the other day that $1.75 was the highest.

Mr. Lewis.— That was the statement made in the record. It did not go back far enough.

A. The highest I was able to find out was $2.00. It goes back to $2.25.

Examination by Chairman Thompson:

Q. Now, I find a very intelligent question here from Commissioner Wood, page 1762 of the record, where he says: "As a matter of fact, didn't you put most of that money back into your property?" Mr. Riggs said "Certainly." Did you take that into your account? A. I don't know what money they were referring to. We find they put something like $59,000 back into the property.

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Q. Now, do you think, Commissioner, when they start with a thousand or a hundred thousand dollars, just take that for a sample — well, start with two hundred thousand dollars, and that is all the money they ever put in, but they pyramid the profits and leave it in the concern, and just declare a dividend of 2 per cent quarterly, or 1 per cent, but pyramid their profit until the earnings of that company produce property of three million dollars, do you think they are entitled to earn on that three million dollars? A. That is not the fact.

Q. I know that it is not the fact. I am only asking you on the assumption. A. Now, there were other bonds — now, assuming that they started with $200,000, and by leaving the profits —

Q. Yes. Some of them, with the natural increase in value of their property and the earnings, what they allowed to remain in until their physical valuation became $3,000,000; do you think they ought to be permitted to earn on that $3,000,000? A. I think we would be absolutely obliged to allow them to earn on the amount they put in it whether it went in in the first instance or in as profit.

Q. So with a gas company, the more money it makes the more money they must charge the consumer? A. If they leave it all in and add to their property, mains and holders and machinery and all that, we would have to allow them a return on it under the law.

Examination by Mr. Lewis:

Q. Have you, Commissioner, made any decision yet in the application for the bond issue — any likelihood of decision on that soon? A. I don't think so. Dr. Weber had some ideas on that.

Mr. Lewis.— I suggest, perhaps it may be proper to defer any action on that subject for a little, until this Committee can give it some little attention. I have not had time to look into this record.

Q. I have the record in Case No. 1048, known as the Fender case? A. Do you want to ask Dr. Weber any questions or Mr. Hine?

Q. No. This Fender case, as I understand the situation —

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Examination by Chairman Thompson:

Q. I would like to ask Mr. Hine how many days he put in on this Kings County Lighting case.

By Mr. Hine:

A. Why, I have put a good many days every year I have been with the Commission. I have no idea of the particular number of days.

Chairman Thompson.— Can you give me an estimate?

Mr. Hine.— I would not attempt to estimate back that far.

Chairman Thompson.— Will you attempt to get that information?

Mr. Hine.— I will not. I have not a memorandum of the times I have been there.

Chairman Thompson.— You can't answer that question?

Mr. Hine.— No.

Chairman Thompson.—And you cannot put yourself in a position from the records of the Commission to answer?

Mr. Hine.— I don't from that.

Chairman Thompson.— Well, will you try so if I ask you this question?

Mr. Hine.— I will try, but there were eight or ten cases tried together, and I will have to go through those.

Mr. Lewis.— If the Chairman please, I want to offer in evidence the record in the so-called Fender case, No. 1048, consisting of these five folders, and I want to say that I asked that these records be brought in to-day, not realizing that they were so bulky as they are, and in the hope that I might be able to get the opportunity to examine them to some extent to-day. I have not succeeded in doing so, and I will offer them in evidence as a preliminary, and then I will get them for further examination when it is practicable.

Chairman Thompson.—Are those described sufficiently on the record?

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Mr. Lewis.— Case No. 1048. I also want the record to show that Mr. Whitney has supplied a transcript of the register or of his records showing the attendance of the various Public Service Commissioners at formal meetings of the Commission, during the years 1914 and 1915, from which it appears that during the year 1914 Commissioner McCall was absent from twenty of the 113 meetings held. Commissioner Maltbie was absent from fifteen of the 113, and Commissioner Cram was absent from thirty-three of the 113, and Commissioner Williams was absent from eleven of the 113, and Commissioner Wood was present at each of the fifty-one meetings held after his appointment. 1915, the record shows that Commissioner McCall was absent at twenty-two out of the 104 meetings, Commissioner Maltbie absent from one out of the thirty-two meetings held during the part of the year during which he was in service; Commissioner Cram was absent from nine of the 104; Commissioner Williams was absent from three of the 104; Commissioner Wood was absent from six of the 104, and Commissioner Hayward was present at each of the sixty-five meetings held since his appointment. I also desire to call attention to the fact that the record of hearings, scheduled hearings, supplied by the secretary of the Commission, shows that in June, 1915, Commissioner McCall attended eleven hearings; Commissioner Williams, thirty-three hearings; Commissioner Wood, fifteen hearings; Commissioner Maltbie, thirty-nine hearings; Commissioner Cram, nine hearings. In July, 1915, Commissioner McCall did not attend any hearings; Commissioner Williams attended seven; Commissioner Wood, twelve; Commissioner Cram, seven; Commissioner Hayward, seventeen. In August, 1915, Commissioner McCall attended one hearing; Commissioner Williams, five hearings; Commissioner Hayward, four hearings; Commissioner Cram, three hearings; Commissioner Wood, three.

In September, 1915, Commissioner McCall attended two hearings; Commissioner Williams, fifteen hearings; Commissioner Cram, six hearings; Commissioner Hayward, twenty-two hearings; Commissioner Wood, nine hearings.

In October, 1915, Commissioner McCall attended three hearings; Commissioner Cram, nine hearings; Commissioner Williams, seventeen hearings; Commissioner Wood, sixteen; Commissioner Hayward, twenty-seven; and that the records show that there were

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three meetings of the Committee of the Whole at which all the members were present.

I think, Mr. Chairman, that completes my record for to-day, and I have nothing further to offer.

Chairman Thompson.— Very well. We will suspend now. In suspending to this date, I don't know as there will be anything done, but we will suspend until Friday at 11 o'clock.

NOVEMBER 26, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee met pursuant to adjournment at 11 A. M.

The Chairman.— The Committee will please come to order.

COMMISSIONER WOOD on the stand.

Examination by Mr. Smith:

Q. Commissioner, do you know the concern now operating or which has operated in the city of New York called the American Sanitary and Supply Company? A. There was such a concern, yes. Whether it is operating now or not, I don't know.

Q. And is it still in existence as a corporation? A. I couldn't tell you that; I don't know.

Q. How long since you had any knowledge of its operations? A. Oh, not since the beginning of 1914.

Q. And in the year 1914 it was operating, to your knowledge? A. As I remember it, it was, yes.

Q. And could you tell me the names of the officers in 1914? A. As I remember it, John A. Mahar was president, and I was vice-president.

Examination by Chairman Thompson:

Q. Is your recollection hazy concerning that you were vice-president? A. I am not hazy.

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Q. You have been hesitating. A. I am talking as fast as I can. I said the early part of 1914. I don't think it is fair to make reference to that.

Q. You came in and said you didn't know very much about it. A. I did not. When I said I didn't know anything about it at the present time, I am giving you the facts.

Q. Well, just give them to us. A. I am answering the question.

Examination by Mr. Smith:

Q. Were you vice-president? A. Vice-president, and I think Daniel F. McMann was treasurer.

Q. Was a man by the name of Frank N. Brundage connected with it in any way at that time? A. He may have been one of the employees. His name is familiar. I am not sure, though. I did not give very much time to it.

Q. Was Bernard Lovett connected with it at that time? A. As I remember, he was the inventor of the patents, and he did have some connection with it earlier than that. Whether he had it in 1914, I don't remember. I think he is the man that invented the patents.

Q. Do you remember whether he was on the board of directors at that time? A. He was at the time. Whether he was then, I don't know. I am not sure.

Q. Do you know whether a man by the name of John McMillan was connected with it at that time? A. I don't remember the name.

Q. He was the treasurer? A. As I remember it, Dan F. McMann.

Q. What was the nature of the business of that concern? A. Why, they had boxes that they put a penny in the slot and they took out towels.

Q. Did they manufacture these boxes or nickel-in-the-slot apparatus? A. No, the boxes were manufactured for them.

Chairman Thompson.— Do the company take the towels out?

Mr. Wood.— The company put the towels in, but the consumer took the towels out. At least, that was the theory.

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Q. Who were the consumers of all those boxes? A. Why, they placed them around in various places, in cafes and such places where they thought that people —

Chairman Thompson.— Why don't you tell us that they put them in railroad stations?

Mr. Wood.— They tried to, but I don't think they did.

Chairman Thompson.— They did, didn't they? That was the object.

Mr. Wood.— It was with the nickel-in-the-slot, but I am talking about the penny-in-the-slot ones. I did not have time to get down to that. We had two kinds.

Chairman Thompson.— Get down to it now.

Mr. Wood.— I don't think that company put them in the railroad stations. I know they wanted to; whether they actually had them in or not, I don't know.

Chairman Thompson.— You had a one-cent one you put in cafes and restaurants?

Mr. Wood.— That is right.

Chairman Thompson.—And you had a five-cent one you were soliciting the railroads for permission to install? A. As I remember the company did try to get it in on the railroads.

Q. Then my statement is correct? A. About putting the five-cent one on the railroads?

Q. Yes. A. Yes, they tried. I don't know whether they had any success or not, because the company has since been wound up, as I have heard.

Q. What other supply or apparatus did they have? A. That was all that I remember. They had these boxes and put the towels in the boxes.

Q. They did not have any between five and up to ten, between the two? A. No, only a cent and a nickel.

Q. And being vice-president of the concern at one time, you of course had a quantity of stock? A. I had some stock, yes, sir.

Q. How much? A. I think it was fifty shares of the preferred and an equal amount of the common.

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Q. What was the capitalization of the company? A. I don't remember that. I think one hundred thousand preferred and five hundred thousand common.

Q. Shares or dollars? A. Dollars. Shares, I guess it was. Hundred thousand shares par value. No, there was a hundred thousand dollars of the preferred stock, and I think it was ten dollars par value of the shares, and I think the company was capitalized five hundred thousand common, but not all issued. I never was very active in it.

Q. Where was its principal business? A. Between Sixth and Seventh avenue, that triangle building up there.

Q. Were you connected with it from the time of its organization? A. Yes, if it was a new company. I am not sure whether I went into it as an old company or it was a new company when I went into it.

Q. When did you go into it as near as you can tell? A. I went into it in 1913.

Q. It was an old company — the record shows it was incorporated December 23, 1909? A. Then it was an old company when I went into it.

Q. And do you know how it wound up its business? A. Well, it was not very successful in selling the boxes, and they did not put out any more.

Q. And is it or is it not a fact that it transferred its business — have you got your stock certificates in this concern? A. No, sir. I sold them when I came on the Commission. I have nothing whatsoever to do with it.

Q. Just prior to coming on to the Commission, you sold your stock? A. Yes.

Q. To whom did you sell your stock just prior to coming on to the Public Service Commission? A. I think I sold it to the president.

Q. Who was the president? A. John A. Mahar.

Q. What Mahar is that? A. Son of Edward A. Mahar.

Q. By any possibility, could that be the Mahar that Commissioner Hayward mentioned, discussing the Forty-second Street? A. No, that is a younger brother.

Q. A younger brother?

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Chairman Thompson.— Who is he a brother to?

Mr. Wood.— Brother to Edward A. Mahar, Jr.

Chairman Thompson.— Who is a brother?

Mr. Wood.— John A. Mahar, the man I sold the stock to.

Q. Can't you tell us what the nature of that dispute is between Mr. Mahar and Mr. Hayward? — I remember the name and ask you if by any possibility — A. Edward A. Mahar, Jr., is assistant general manager of the Third Avenue. I sold it to his brother.

Q. When were you appointed? A. I was appointed about the 25th of May, 1914, and I took office June 1, 1914.

Q. And when did you sell their stock? A. The latter part of May.

Q. Subsequent to your appointment? A. Yes, before I swore in office.

Q. And prior to your qualification? A. Yes.

Chairman Thompson.— You don't remember the date of it?

Mr. Wood.—About the end of May.

Q. You say that you had fifty shares of the preferred and fifty of the common? A. As I remember it, that is what it was, yes.

Q. And was that an investment purchase on your part? A. No. I don't know what you would call it — speculative or investment. I bought it.

Q. At what price? A. I paid five thousand dollars for it, I think.

Q. And sold it to Mr. Mahar for how much? A. The stock was not worth anything. I think I sold it for a couple of dollars or something like that. There was no market for the stock. The company is out of business now. I wanted to divest myself of it entirely, and the stock has no value.

Chairman Thompson.— No value at all?

Mr. Wood.— No.

Chairman Thompson.— So that for two dollars you say you turned it over to John Mahar?

Mr. Wood.— Yes, to get rid of it.

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Chairman Thompson.—A friend of yours?

Mr. Wood.— Not a particular friend.

Examination by Chairman Thompson:

Q. Haven't you been interested with him in business for quite a while? A. No.

Q. Weren't you interested with these Mahars in some railroad proposition up in the Bronx? A. No, sir. I was a stockholder when they bought the road, but I sold it right afterwards.

Q. You had some stock in that road that the public did not seem to take to with great acclaim there? A. I don't know what you mean by that question, but I sold my stock in that road.

Q. See if you cannot concentrate your recollection a little better than you did about the American Sanitary Supply Company. A. Senator, I don't think it is fair to make those insinuations.

Q. Don't talk back to me, because I sha'n't permit you to. You just answer. A. I am doing it.

Q. Now, if you will concentrate your recollection just a little bit better than you did, of the American Supply Company, when you took your seat — you just give us your history of traction matters in the Bronx prior to your going on the Public Service Commission. A. All right, sir. In 1902, when the subway was being built, had been projected, there was a line extending up the northern part of Manhattan, across the ship canal, and was laid out as far as 230th street and Bailey avenue, in the Bronx. That is the west part. Then the eastern branch of the subway went up Lenox avenue to 145th, and then through 145th street — 149th street up Westchester avenue, and the Southern boulevard, to 180th street, in the Bronx. Now, there the subway was running up on the east side, and running up on the west side with the Manhattan Elevated, running up through the center of the Bronx, up Third avenue as far as the Botanical Gardens at 200th street. Now, there were no connections, no feeders to relieve these new rapid transit lines. The Coney Island Railroad Company had been laid out in 1892 — I mean consolidated — three-horse roads in 1892, and it was principally a north and south line. Their lines were practically laid out on the streets that run north and south in the Bronx. Now, there were a number of streets

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and a number of bridges across the Harlem river that had no street railroad facilities, and there was no way of getting to the Rapid Transit station in a number of cases on the elevated, and especially in regard to the new subway lines, and in conjunction with a friend of mine, I laid out the New York City Interborough system, and which consisted of crosstown lines to meet these changed conditions in the Bronx.

Q. Who was your friend? A. W. J. Fransiola. And these new lines ran principally to the subway stations. It was principally a crosstown system, and there were a number of bridges across the Harlem river that had no street railway transportation, the Washington bridge, McCombs Dam bridge, and Lenox bridge, and Willis avenue bridge. We laid out this crosstown system and later sold the controlling interest in it to the Interborough Rapid Transit Company, and then later on the Third Avenue Railroad acquired the Interborough's interest in it, and I sold out my stock to the Third Avenue Railroad Company.

Senator Lawson.— How long ago was that?

Mr. Wood.—As I remember, it was in 1912.

By Chairman Thompson:

Q. Whom did you sell that stock to? A. The Third Avenue Railroad Company, F. W. Whitridge, president.

Q. How much did you get for it? A. I don't remember exactly. It was around about nineteen dollars a share, I think.

Q. Did you sell some of it for fifty-five dollars a share — for some of it? A. I did not.

Q. How much did the other stockholders get? A. I turned in my stock for that, and some of the others did, too. Some of the others would not turn it in.

Q. Some of the others didn't get only five dollars? A. I don't know what has been traded on the street.

Q. Don't you know the stock was worth a great deal less than nineteen dollars a share? A. I understand they bought some of it for less than that.

Q. Don't you understand some of it sold as low as five dollars? A. I did not follow the market. I don't know.

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Q. After you got out, you did not pay any attention to it? A. I won't say that. After I sold my stock I severed my connection with it.

Q. The nineteen dollars you received made you a profit? A. No, sir, because some of it I bought as high as fifty dollars a share.

Q. When did you make this sale? A. 1912.

Q. How long prior to your appointment as Public Service Commissioner did you make this sale? A. Two years.

Q. Is John Mahar interested in this railroad? A. No, sir, as far as I know, he never had any interest.

Q. Is Edward A. Mahar interested? A. No, sir.

Q. Wasn't there a railroad up there you were connected with that Mr. Mahar had some connection with? A. No, sir.

Q. Never? A. Nothing outside of any I just told you.

Q. What did you tell me with relation to the Mahars? A. I told you I sold my stock, and he never had any interest.

Q. What connection did Mr. Mahar have that you just told me? A. The only possible connection he could have, they bought the railroad and I sold them the stock.

Q. The Mahars bought the railroad? A. No, they did not. The Third Avenue.

Q. Mahars were interested in the Third Avenue? A. He is an employee or official.

Q. You sold the stock to them? A. I sold to the Third Avenue.

Q. Didn't you talk to them about the sale of the stock? A. I talked to Mr. Whitridge and Mr. Mahar was at the conference.

Q. And your negotiations were through Mr. Mahar? A. Were with Whitridge and Mahar both.

Q. I ask you if they went through Mr. Mahar? A. Through Whitridge and Mahar.

Q. You had negotiations with Mahar? A. Partly, yes.

Q. This is the same Mahar that refused to comply with the order of the Public Service Commission? A. I don't know he refused.

Q. You handled the resolution for him last Friday? A. I did not handle any resolution at all. I introduced a resolution and authorized counsel to start penalty proceedings.

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Q. Ever talk with him over that private telephone you have up there? A. Not lately.

Q. You talked to him? A. I did.

Q. Did you ever talk with Mr. Mahar over that private telephone you have up there? A. I may have, yes. Probably have.

Q. Well, you know you have, don't you? A. Probably have, yes. I have talked to a great many people over it.

Examination by Mr. Lawson:

Q. Did you ever talk with him over the telephone relative to this proposition? A. No, sir, never have.

Q. You know the switch proposition has been under fire a year or more? A. You mean the report?

Q. Yes. A. No, it could not have been. The order was only entered last May.

Q. Didn't we have the question up at the last hearing? A. You are talking about the Spillane switch. That was reported some time last spring, I think.

Q. This particular switch question that you introduced the resolution and handed over to counsel, hasn't that been under consideration by the Commission or one of the individual members of the Commission for quite some time? A. Well, that order that I referred to counsel, that was issued in May.

Q. Wasn't it under consideration by the Commission or by individual Commissioners prior to May? A. Yes, sir.

Q. Some time prior to May? A. Yes.

Examination by Mr. Smith:

Q. Wasn't the proceeding which resulted in the May order, about which you discussed with Senator Lawson, initiated by the Commission more than a year ago? A. No.

Q. When was it? A. The order was passed last May.

Q. I said the order. A. Or the proceeding.

Q. The proceeding initiated by the Commission? A. Yes, it was initiated last May.

Q. How much stock did you say you held in this New York City Interborough Railway with which you were connected? A. I think I had a couple of thousand shares, two or three thousand shares.

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Q. What official position did you hold in that concern at the time you transferred the stock? A. Didn't hold any.

Q. Did you know that Edward Mahar, a brother of John A. Mahar, to whom you sold your stock, was a director at one time of the American Sanitary Supply Company? A. No, I didn't know. The brother was.

Senator Lawson.— Did you know he was?

Mr. Wood.— Yes. I testified he was.

Examination by Chairman Thompson:

Q. I got a statement here that you made May 25, 1914, in relation to this matter. Do you remember making it? A. I made a statement?

Q. Yes. A. Where did I make the statement?

Q. The New York World on May 25, 1914, printed an article in reference to you; do you remember that? A. Well, I read the papers, but I don't remember that particular article.

Senator Lawson.— Don't you recall any part of it relating to a hotel up in the woods where you were supposed to reside?

Mr. Wood.— I remember something of it.

Examination by Chairman Thompson:

Q. Do you suppose your recollection — A. If you will tell me what the statement was, I will try to answer you.

Q. Did you make such a statement? A. I don't remember making it. If you say I did, I will take your word.

Q. Do you remember of being in the New York World of May 25, 1914? A. That statement that I issued?

Q. Yes. A. Yes, I remember that statement in a general way.

Q. Now, suppose you concentrate your recollection on that. Do you remember now of making a statement of six typewritten sheets? A. Well, if you say it was six typewritten sheets and you have it there, I guess you are right.

Q. Well, couldn't you remember it without that? A. I don't remember exactly what was in that statement. It was made a year and a half ago.

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Q. You were quite a little agitated about that article? A. Not at all.

Q. Perfectly normal, so that you forgot it? A. Well, now, if you will tell me, Senator, put the question to me what you want to know in regard to that statement?

Q. I don't want a thing on earth except the facts in relation to the question that has been asked you, and if you will tell the facts probably you will get along all right, and that is all we want, but in that statement you said something about a syndicate of which you are a member, didn't you? A. I represented a syndicate in the early days, yes.

Q. Now, who was that syndicate? A. Principally Wood & Havemeyer, my firm, and W. J. Fransiola was in that.

Q. He was the man you sold this stock to? A. No, he was vice-president, in the old business of the New York City Interborough.

Q. Who else? A. John H. Scovell, of Maxwell & Scovell. That is about all.

Q. Well, I want them all. A. I don't remember any others.

Q. Anybody by the name of Mahar? A. No, sir.

Q. Nobody? A. Nobody; no, sir.

Q. Well, now, how did you represent that syndicate? Have you got the syndicate agreement? A. No; didn't have any syndicate agreement. I started the road.

Q. You say you did not have a syndicate? Didn't you say in this the agreement referred to in my statement as quoted in the article as having been signed with the Rapid Transit Company aforesaid mentioned? A. There was no agreement. The syndicate relied on me.

Mr. Smith.— On your recollection?

Mr. Wood.— They knew me, and they relied on me.

Examination by Chairman Thompson:

Q. And so that was all done by word of mouth? A. Yes, sir.

Q. You do business in that way in large figures, do you? A. Sometimes.

Q. You leave the agreement so that you may have an oral agreement involving large amounts of money? A. I have.

Q. And that is the way you did in this connection? A. Yes.

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Q. And is it usual to do business involving large amounts of money where you take each other's word, regardless of any writing that may be in existence? A. I don't know how usual it is. We did it in this case.

Q. And have you done it in other cases? A. Sometimes.

Q. And haven't you done it in relation to this Sanitary Supply stock, when you turned it over for two dollars to Mr. Mahar? A. No, sir.

Q. You paid five thousand dollars for it? A. Yes, sir.

Q. And turned it over for two dollars? A. Yes. It is not worth anything.

Q. You mean it is not worth anything to-day? A. I don't think it is.

Q. Why not? A. Because the company is out of business as far as I know.

Q. What has become of it? A. It did not make any money, and as far as I know it is going through a process of evaporation.

Q. Well, why did you sell it for two dollars? A. Because I wanted to get out of it; wanted to divest myself of it and have no further connection with it.

Q. Why? A. Because it might have contracts with railroads, and that would be against the law.

Q. So that you wanted to take some course to get away from this provision in the Public Service Law? A. I wanted to comply with the provision. I did not want to get away from it. I wanted to comply with it.

Q. And so you went to Mahar and asked him to take it over on that account? A. I wanted to divest myself, and I practically gave it to him.

Q. And that was on account of this law? A. Yes.

Q. Just as Judge McCall turned his over to his wife? A. I don't know the details of that at all.

Q. Where did you see Mr. Mahar when you turned it over to him? A. I am not sure whether he came down to my old office or not, or to the uptown office, but I think he did, as I remember it.

Q. Did you send for him? A. I telephoned to him I would like to see him. I am not sure where I saw him.

Q. Did you have the stock? A. Yes, gave him the stock.

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Q. That was one of the times you called him up on the private wire? A. No, sir; it is not.

Q. And you met him? A. Yes.

Q. And you say you don't know whether he came to your office, or uptown? A. I don't remember that now.

Q. By your office, where do you mean? A. 43 Exchange place.

Q. Havemeyer & Wood? A. Havemeyer and I have it together. A little bit of an office where we keep things.

Q. When he arrived, tell us what the conversation was. A. I told him I wanted to sell the stock and divest myself of it, get out of it. I knew it had no value.

Q. Just tell us what you said to him. A. And he said, "All right," and I gave him the stock, and I haven't seen him since.

Q. Anything more happen? A. He gave me a bill of sale of it.

Q. He gave you a bill of sale? A. Yes.

Q. Where is that? A. I think I have it.

Q. Will you get it, please? A. I will try to. Do you want it right away?

Q. Yes. A. Yes.

Q. How long will it take you to get it? A. Half an hour.

Chairman Thompson.— We will suspend until 2 o'clock, and you bring that agreement back at that time.

AFTER RECESS

ROBERT C. WOOD on the stand.

Examination by Chairman Thompson:

The Witness.— Mr. Chairman, I would like to make a statement. I want to say that the best of my recollection is that this American Sanitary Supply Company had no contracts with any railroad around New York prior to the time that I sold my stock.

Q. Then why did you sell the stock? A. Because they were negotiating with the company to use the machines on railroads.

Q. What company was that? A. I don't know. Mr. Smith probably knows.

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Q. Don't you know? A. No, I have forgotten the name of it. It was some company, a man by the name of Waterbury was interested in, I have forgotten the name of it. I can find out for you very easily.

Q. I don't like to be disrespectful, Commissioner, and I don't like to ask disrespectful questions, but I want to get my mind straightened out. Are you pretty rich? A. Well, I am not, no.

Q. Now, you are not so rich that you would forget a transaction and forget the details? A. I am not talking about a transaction. I said the transaction did not take place.

Q. Don't interrupt me again. A. I supposed you wanted to be fair.

Q. You are not so rich that you would forget a transaction wherein you lost $4,999, would you? A. I don't think I have forgotten it.

Q. Then, now, remember the name of this company you turned it over to. A. I didn't say I turned it over. I said —

Q. Don't sit here and pose as not having any recollection about this transaction, because I am going to tell you I don't believe you. A. I am sorry, but I have a recollection about this transaction. I am speaking about the bill of sale which I would like to have incorporated in the record.

Q. I am asking you the name of the company that is manufacturing, that is, that the American Sanitary machines was turned over to them? A. I said the American Sanitary Supply was negotiating with another company to use its machines.

Q. What is the name of the other company? A. I have forgotten, but I will find out for you and let you know to-morrow, or whenever you have your next session.

Examination by Mr. Smith:

Q. Prior to the recess you agreed to look up and present a bill of sale which you received from John Mahar, in connection with your transfer to him of the stock of the American Sanitary Supply Company? A. Yes, sir.

Q. Did you find that bill of sale? A. I did.

Q. And you desire that to be incorporated in the record? A. Yes, sir.

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Mr. Smith.— We will have it marked in evidence.

Chairman Thompson.— Read it in evidence.

Mr. Smith.— Printed letterhead,

"John A. Mahar,
322 Fifth Avenue, New York.

June 12-14.

My dear Mr. Wood: Enclosed please find one (1) dollar in payment for the shares of American Sanitary Supply Company stock, turned over to me on Wednesday last. Very truly yours, John A. Mahar."

In the lower left-hand corner, "Mr. Robert C. Wood, 43 Exchange Place, N. Y. City."

Q. This indicates on its face, does it not, Commissioner, that the transaction relating to the transfer of the stock, as you claim, occurred on Wednesday? A. That is what that says.

Q. Well, then, that is what it indicates, does it not? A. I turned that over to him about that time. I presume that is right.

Q. You have no contradiction with this written statement, have you, on that proposition? A. That is my recollection, I mean about that time I turned it over to him.

Q. And that on a subsequent date, June 12, he sent you a dollar? A. That is it.

Q. Now, what writing did you have on the Wednesday subsequent, in relation to the transfer of the stock? A. I don't think I had any.

Q. What writing other than this has been had by either of you on that or any other date in relation to the transfer of this particular stock? A. I don't know of any. I don't remember any.

Q. Was the dollar that he enclosed in the form of a check, or in a dollar bill? A. Dollar bill.

Q. Do you know whether or not there was any writing other than this instrument which you described as a bill of sale in relation to that transaction? A. I don't think there was.

Q. Well, do you know? A. I am quite certain there was not.

Q. Quite certain there was not?

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Chairman Thompson.— What became of the other dollar?

Mr. Wood.— I guess that's in circulation.

Chairman Thompson.— You never got that?

Mr. Wood.— No. I should correct my testimony. I only got one dollar instead of two. The stock is worthless and a defunct corporation.

Q. When you transferred your stock in the Interborough City Company, at nineteen dollars, was it in cash or check? A. That was in a check.

Q. So there is a record of the particular date and time in 1912 when that stock was transferred? A. I sold it, yes, in 1912.

Q. And there is, then, a record of the particular date in 1912 on which that transaction occurred? A. I presume there is. Yes.

Q. That would be in the hands of the other party? Being a check cashed by you? A. Yes.

Q. Now, have you any record in your books of the particular date in 1912 on which that transaction took place? A. I don't know whether I have or not. That was paid by check of the Third Avenue Company.

Q. And the number of checks from the Third Avenue Company have not been very frequent during 1912, anyway, have they? A. No, they have not.

Q. So that you would have some record in your books, or memorandum of having received a sum of money of them from the Third Avenue Company, so you could refer to it? A. I most likely have.

Q. And will you produce the record of the particular date on which that transaction occurred? A. I will endeavor to do so, yes.

Q. Was the sale of that stock a matter of agreement for any lengthy period prior to the date of its actual transfer? A. I think it was a couple of months, perhaps.

Q. That you were under obligation to transfer it? A. Yes, I had sold it.

Q. You had sold it some two months prior? A. Something like that. Some little time before.

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Q. What was the cause of the delay? A. I think, as I remember it, I exchanged it for bonds, and then I sold the bonds.

Q. You exchanged the stock for bonds in the company? A. Yes.

Q. And don't you consider that the time of the sale and transfer of the stock? A. Well, very possibly. But I was paid for it in 1912.

Q. You were paid for it in 1912? A. Yes.

Q. But some time prior, you say, you transferred the stock for bonds? A. Yes.

Q. How long prior? A. I think it was perhaps a month or so. I don't exactly remember.

Q. And was that transfer from stock to bonds the result of the syndicate arrangement? A. No. It was an arrangement I had with Mr. Whitridge.

Q. And did the other members of the syndicate go through the same performance at or about the same time? A. Yes.

Q. So that the syndicate came into possession of a quantity of bonds? A. I say a syndicate; there was myself and my partner. The syndicate Senator Thompson spoke of was earlier, away back in 1902 or 3.

Q. So this 1912 transaction, you refer to simply as the sale or the final disposition of the stock? A. Yes.

Q. And considering the face value of the stock, what was the proportion that you got in bonds — less or greater than the face value? A. Oh, much less.

Q. How much less? A. I don't remember the exact amount now, but it netted about twenty.

Q. That is, the ultimate transaction was at about twenty? A. Yes, sir.

Q. Per share of stock? A. Yes.

Q. Twenty dollars per share of original holdings in stock? A. Yes.

Q. And these bonds bear interest? A. Yes.

Q. And you drew the interest on them at the time of the sale? A. No, I did not hold them long enough for interest.

Q. You did not hold them long enough for interest? From what person or persons did the bonds come from? A. Came from the Third Avenue Company.

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Q. And to whom were they sold? A. Sold back to the Third Avenue.

Q. Why that transaction, as far as you can explain it? The holding of the bonds for a period of a month? A. Well, I agreed to exchange my stock for bonds, and then they wanted to buy the bonds afterward.

Q. Who came to you representing the company soliciting the purchase of your bonds? A. I don't know. I had a talk with Mr. Whitridge about it.

Q. Anybody else? A. I had a talk with Mr. Whitridge and Mr. Mahar.

Chairman Thompson.— Which Mahar?

Mr. Wood.— The elder.

Chairman Thompson.— Edward A. Mahar, Sr.?

Mr. Wood.— Senior, yes.

Q. And together or at different times and places? A. I forget now. I think it was at different times, as I remember it.

Q. Was there any time when you had a conference with both of them in regard to the transaction? A. I don't remember now exactly whether there was or not. I know I saw them both at different times.

Q. How long were the negotiations pending? A. I don't remember now, Mr. Smith. A month or so. Perhaps a couple of months.

Q. Was there any interval between the final arrangement whereby you agreed to dispose of your bonds and the receipt of the check from the railroad company for them? A. Well, I think there was a month or so, yes.

Q. So that as a matter of fact, from the time that you exchanged your stock for bonds, there were negotiations pending for the resale of the bonds to the company, commencing immediately? A. Well, I suppose you might express it that way.

Q. Well, I don't want to express it at all. I would like to have you express it. A. Well, I got the bonds and then they wanted to buy the bonds.

Q. Right away? A. Practically, yes.

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Q. And you negotiated with them for a month, or did you agree to sell them practically right away? A. I told them I would sell them to them.

Q. And fixed the price? A. Yes.

Q. And then waited a month for your check? A. As I remember it, it was somewheres around there.

Chairman Thompson.— How much did you get for them?

Mr. Wood.— For the bonds?

Chairman Thompson.— For the whole matter?

Mr. Wood.— I said the stock netted about twenty dollars a share.

Chairman Thompson.— That don't answer. How much in round numbers?

Mr. Wood.— I don't remember now.

Chairman Thompson.— This paper says that you have several times admitted that you received $1,200,000 in the company.

Mr. Wood.— That was back in 1904. This is a different transaction.

Chairman Thompson.— That is not the transaction you are talking about?

Mr. Wood.— No.

Q. Had you increased your original holdings of stock in this company from time to time? A. I bought some stock around 1904, as I remember it.

Q. And subsequent to 1904 or 5, did you buy stock? A. I don't think so.

Q. How close to the time of the bond transaction did either you or your firm acquire any stock of the concern? A. I don't remember that, Mr. Smith.

Q. Was it within any comparatively short period of time? A. There wasn't anything doing in the stock for a long time.

Q. Was there other persons other than yourself or your partner or the concern interested in the exchange of stock for bonds at

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the time that you made your exchange? A. Was there any other person?

Q. Was there any other person or persons interested with you in the exchange of their stock for bonds? A. Yes, one or two.

Q. Well, how many? A. I don't remember the exact number now. I know Mr. Fransiola did, but I don't remember who the others were.

Q. You have no recollection of any other person? A. No, I haven't.

Q. Was that a syndicate arrangement? A. No. That was an individual arrangement.

Q. Individual arrangement? A. Yes.

Q. Did you have charge of his transaction as well as your own? A. No.

Q. Was there any person had a deal of the same character at the same time, whose dealings were under your control as agent or representative? A. No, I don't think so. I don't remember, but I don't think so.

Q. Is it possible that there might have been and escaped your recollection? A. Well, there might have been. There were a few other shares, but I don't remember now.

Q. You don't remember the name of the persons? A. No.

Q. Was the holding as large in the aggregate as your own? A. No.

Q. Very small? A. Yes.

Q. And you say that you will produce the record of that? A. I will endeavor to, yes.

Q. Through what sources did you acquire your Sanitary stock? A. I bought it from the company.

Q. What particular person did you have your dealing with? A. I think young John Mahar. I bought it from young John Mahar.

Q. The same person to whom you transferred it later for the one dollar? A. Yes.

Q. And you paid five thousand dollars for it when you got it? A. Yes, sir.

Q. And held it practically a year? A. About that, I should say, yes.

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Senator Lawson.— What was the par value of that Sanitary stock?

Mr. Wood.— I think it was ten dollars a share. I paid five thousand dollars.

Q. Do you know how many shares you got, or did you buy it at par? A. I bought the preferred stock at par and got the common stock as a bonus.

Q. So, as a matter of fact, you had five thousand dollars' worth of preferred and five thousand dollars' worth of common? A. That's what it was supposed to be.

Q. That was its face? A. Yes.

Q. So, as a matter of fact, at the time of the sale, you disposed of ten thousand dollars' worth of stock, preferred and common? A. It is very easy to talk of ten thousand dollars' worth of stock.

Q. Par value. A. Well, it did not have any value. That is the trouble.

Q. Well, par value and value recognized is two different things in stock transaction? A. I know very often they call stock as par value.

Chairman Thompson.—As a Public Service Commissioner, you have to take into account stocks do have a par value as distinguished from their real value?

Mr. Wood.— When we produce or dispose of stocks, we have to find they have a real value. I don't think you can adopt any hard and fast rule in regard to that.

Examination by Chairman Thompson:

Q. Now, having made another observation, will you kindly answer my question? A. Whether we have to take into account whether they have par value or real value? I would have to know the occasion of what we were passing on before I could answer that question.

Q. A man that can understand obsolescence and depreciation ought to be able to answer that question. A. You state to me some concrete example, and I will answer it.

Q. (Repeated by stenographer: "As a Public Service Commissioner, you have to take into account stocks do have a par value as

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distinguished from their real value?") A. I should say that par value had a good deal to do with real value.

Q. Now, then, answer the question. A. We have to take into consideration the real value as well as par value. I am going to answer that question the way I think is right, and I don't want to be placed in any false position.

Q. You are going to answer it the way I think it should be answered, and if you do not treat this Committee respectfully and if you do not take the suggestion of the Chairman in perfectly competent matters, I will prefer charges against you before to-morrow morning. A. I haven't anything for the Committee but respect.

Q. Now, you comprehend that question and answer it yes or no, because you can — we are not fooling with this question. A. I am not fooling with it either.

Q. And you better take it serious. Now, as a Public Service Commissioner, you frequently have to take into account that there is a difference between the par value of a share of stock and the real value of the share of stock, don't you? A. Yes.

Examination by Mr. Smith:

Q. Now, Commissioner, at the time you made the sale of Sanitary stock, there was a tight value or a face value or a value of some kind amounting to ten thousand dollars, was there not? A. No, sir, I shouldn't say there was.

Q. Didn't you have in your possession certificates enough for ten thousand dollars per share each to represent on their face, ten thousand dollars? Yes or no, please. We can pass the subject in a moment if you will answer. A. I don't remember how that stock was paid in, but I presume it was paid in through patents, and possibly it did have an imaginary face value of the par value called for.

Q. Did you have in your possession at the time of the sale of this stock certificates enough to represent on their face in the printing contained thereon the sum of ten thousand dollars? A. I presume I did, yes.

Q. And that was the quantity of material that you sold for a dollar? A. I sold that paper.

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Q. Yes or no? A. I sold the paper. It represented paper value.

Q. It was paper, wasn't it? A. Yes, that's all it was.

Q. Now, did the concern, the American Sanitary Supply Company, have any other device for sale or any other method of producing an income than these slot machines about which you told us this morning? A. As far as I remember, they did not. That was the whole business. That was their business.

Q. And at the time that your sale of stock occurred there was no contract with any railroad company in or around the city of New York? A. No, sir, as far as I remember.

Q. Or with any public utility corporation of any kind or character? A. Not as I remember.

Q. The Public Service Commission of which you were about to become a member has no regulation over restaurants and cafes and places that this company was then doing business with? A. No, sir.

Q. And did it have contracts with railroads outside of the city of New York? A. Why, as I remember, they sold some machines down in some railroad down in Florida.

Q. And that was all? A. As far as I recollect.

Q. Did you know that at the time you sold the stock there was pending negotiation or agreement with a corporation called the Railroad and Steamboat Supply Company? A. That is the one — Waterbury's company. I mean to say, that is the name I tried to remember.

Q. And did you know that that agreement or that some agreement ultimately became in force between the American Sanitary Supply Company and the Railroad and Steamboat Company? A. Well, I knew that they were trying to come to some agreement, but whether they ever did, I don't remember.

Q. Did you ever hear that they had or had not? A. No, I don't.

Q. You know nothing about it? A. No.

Q. Do you know that the American Sanitary and Supply Company is still in existence as a corporation? A. I couldn't even tell you that. As far as I know, it is not doing any business, but I don't know. I mean to say I don't think it is doing any business, but I am not sure.

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Q. Do you know whether or not they have the sign and paraphernalia and office at the same place as the Railroad and Steamboat Supply Company? A. No, sir, I do not.

Q. Do you know where the office of the Railroad and Steamboat Company is? A. No, sir, I do not.

Q. Do you know Nelson J. Waterbury? A. I have met him, yes.

Q. In what connection? A. Why, I met him a couple of years ago, two and a half years ago. I met him at the Manhattan Club, and he told me he was going to get his machine on the railroad, and I don't know whether he has ever got started or not.

Q. What machine? A. He had a machine he was going to put on the railroads, too — this Railroad and Steamboat Supply Company.

Q. And what other machine that he had? A. That is the only one.

Q. The one formerly owned by the American Sanitary Supply Company? A. I say the Sanitary Supply Company tried to make an arrangement with Waterbury to use Waterbury's contract and put their machines on the railroad.

Q. And Waterbury told you at that meeting in the club he was going to make an arrangement to get them on? A. He told me he was working on it. I don't know that he ever got down to a concrete establishment of the fact.

Q. Was that before or after you sold out? A. That was before I sold out, some time ago.

Q. And you have not seen him since? A. No, I haven't.

Q. You never had any other business dealings with him? A. I never had any business dealings with him.

Q. Do you know Mr. Streeter of the Railroad and Steamboat Company? A. I have heard his name, but I don't think I have ever met him.

Q. Did you hear it in connection with these negotiations or transactions? A. I heard that Streeter was the vice-president or was — I heard that.

Q. When did you hear that? A. Oh, some time before I sold out.

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Q. And from Mr. Waterbury? A. I don't know now whether it was Waterbury or whether it was from John Mahar.

Q. It was from one or the other? A. Yes.

Q. And did you ever know Frank B. Cleland? A. No, I never met Mr. Cleland.

Q. Or William R. Townsend? A. No, I don't know him.

Q. Ralph G. Geer? A. No.

Q. Or Henry Weston? A. No.

Q. And you have given us all the information that you have in relation to the Railroad and Steamboat Company? A. Yes.

Examination by Chairman Thompson:

Q. Is that the name of the Railroad and Steamboat Company? A. I believe it is. I have no desire, Senator, to hold anything back.

Q. If you would let the stuff come from the inside out of you a little faster, I would have more confidence in you. A. I know it was Waterbury's company, and I told you that I couldn't think of the name.

Q. And the Railroad and Steamboat Company was it, wasn't it? A. That Steamboat was the one.

Examination by Mr. Smith:

Q. This conversation with Mr. Waterbury was prior to your selling out, and prior to your becoming a Public Service Commissioner? A. Yes.

Q. And what kind of a man is this Waterbury? A pretty good business man? A. I don't know anything about that.

Q. Had a fair degree of confidence in his ability and his experience? A. He seemed to be quite active. I don't know how good a business man he is.

Q. Did you ever hear that these negotiations between your Sanitary Company and the Railroad and Steamboat Company had ceased? A. No, sir.

Q. And you recognized as a business man the possibility that if they succeed your Sanitary stock might become of reasonable value? A. No, sir; I never had any hopes that it would ever be of any value.

Q. Did you ever make any but the single offer to sell it? A. It was not worth anything.

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Q. Did you ever make any but the single offer to sell it? A. I spoke to a couple of people about it, but there was no market for it.

Q. Who was it? A. I think I spoke to Mr. Warren Leslie about it, a lawyer.

Q. Who was Mr. Leslie? A. He was one of the directors of the company.

Q. Were you offering to sell it to him? A. As I remember it, I asked him about it.

Q. Offered to sell it to him? A. Yes.

Q. What did you say? A. Why, I said I had some stock for sale.

Q. And what did he say? A. He said he didn't want it.

Q. Did you tell him what kind of stock it was? A. Why, he knew it was the stock of the company.

Q. That all the stock you had? A. That's all.

Q. In any company? A. As I remember, at that time, yes.

Examination by Chairman Thompson:

Q. Who is Warren Leslie? A. A lawyer. One of the directors of the company.

Q. Is he the Leslie that is related to Senator O'Gorman? A. Yes, sir; that is the one.

Q. What relation is he? A. Married Senator O'Gorman's sister.

Q. He was a director in the Sanitary Company? A. Yes.

Q. And remained a director? A. I don't know; I think he resigned. I am not sure. I have lost all track of it. I don't know anything about it.

Examination by Mr. Smith:

Q. And he was one of the persons you spoke to? Now, who was the other? A. I don't think I spoke to anybody else. It had no value at all.

Q. I am not discussing value at all. I am discussing a conversation you had with a man in regard to the sale of this stock. Now, you had no other conversation with any person? A. No, not as I remember.

Q. And no further conversation than that one with Mr. Leslie? A. That is all, yes.

Q. And I would like to be a little more definite about the

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Mahar conversation. Did you tell Mahar you were getting rid of it on account of your future position as a Public Service Commission member? A. I think he knew that, yes. I think I told him that.

Q. As a matter of fact, you practically did not have any conversation with him; you simply told him you were simply going to become a Public Service Commissioner, and you had this stuff and you wanted to get rid of it, and you would like to have him take it? A. I told him I would — wanted to get rid of the stock, yes.

Q. And passed it over to him on a Wednesday? A. Yes.

Q. And on a future day he enclosed you a dollar? A. Yes, and a bill of sale.

Q. Did you demand the dollar between the time you gave him the stock and the time he sent it to you? A. No, I don't think so. I told him I thought there should be a consideration, and he made out that bill of sale and he sent it to me.

Q. Had you ever put the stock up as collateral, so that it had previously required signing in blank, the certificates? A. No, sir.

Q. Were they signed in blank? A. Yes, sir.

Q. When did you sign them in blank? A. I don't remember.

Examination by Chairman Thompson:

Q. Now, I have sent a subpoena for Mr. Mahar, but the officer reports he has been unable to find him. Has Mr. Mahar this stock in his possession? A. I gave it to him. I don't know what has become of it.

Q. And he is still acting in the company? A. That I don't know.

Q. Do you think you could get in touch with Mr. Mahar and ask him to appear here this afternoon? A. I will do anything you want me to, Senator. I don't know where he is.

(Recess of ten minutes.)

The Chairman.— The Committee will come to order.

Mr. Smith.— I would like to ask the Commissioner a few more questions, if I could.

Chairman Thompson.— Yes.

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COMMISSIONER WOOD on the stand.

Examination by Mr. Smith:

Q. Commissioner, for the purpose of fixing the record, or letting you straighten out a matter that confuses the Committee somewhat, I understood you to say this morning that you bought fifty shares each of preferred and common of the stock of this Sanitary Company? A. I paid five thousand dollars for them. As I remember, the par value was ten dollars. If that was the case, then I bought five hundred of the preferred.

Q. And five hundred of the common as a bonus? A. Well, I had a bonus of common, which I think was the same amount.

Q. Now, the 12th day of June, 1914, was on a Friday, and the Wednesday previously, the 10th of June, was the day on which this transaction with Mr. Mahar took place. You received the communication which you have delivered here? A. I delivered him the stock on Wednesday.

Q. And received the dollar on Friday? A. That was it.

Q. Through the course of the mail? A. I forget now just how I did get it, but I got it, anyhow, as per that letter.

Q. Well, did that letter come through the mail? A. I don't know whether it did or not.

Q. How otherwise could it come? A. I might have seen him that day.

Q. The words of the letter say "enclosed." A. Well, it is very possible it did.

Chairman Thompson.— Haven't you got any recollection on that, whether it came by mail or not?

Mr. Wood.— No, I don't remember whether I saw him, or whether that came by mail.

Q. And when you got it to-day, where did you get it? In what kind of a file, or what place? A. I got it in my files.

Q. In what kind of a file, a letter file? A. Yes, a letter file.

Q. And was the envelope still on it? A. No. It was in just an ordinary letter file, and I pulled it out.

Senator Lawson.— Do you know what became of the envelope, Commissioner, that that communication came to you in?

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Mr. Wood.— No. I would naturally throw it away.

Examination by Senator Lawson:

Q. Well, did it come in an envelope? A. Well, I don't remember, Senator.

Q. Did it come open with a dollar bill in it? A. Why, it must have come in an envelope, with a dollar bill.

By Chairman Thompson:

Q. Well, did it come in an envelope? That is what he asked you. A. Yes, I presume it did.

Q. I don't like to have you presume all the while. A. This is a year and a half ago I got this letter. I don't remember just now how I did get it, but I know I got the dollar bill, and I know I got the receipt.

Q. But you don't know anything about the envelope? A. No, I don't remember about the envelope.

By Senator Lawson:

Q. When you received it first, was it handed to you, or was it laying on your desk, or did it come through the mails? A. Let me see. I think he handed it to me. That's it.

Q. And he handed it to you enclosed in an envelope? A. Yes, I remember now. He came down to see me, and he gave it to me in an envelope.

Q. Now, did I understand you to say that the par value of this stock was ten thousand dollars? A. I think the par value was ten dollars a share, as I remember it.

By Chairman Thompson:

Q. Do you recognize Mr. Waterbury? A. Yes, I have seen him before.

Q. He didn't know you very well when you first came in? A. I recognized Mr. Waterbury, but he has got a little stouter than when I saw him last.

By Mr. Smith:

Q. Now, the par value of this stock was ten thousand dollars, and the par value of each share was ten dollars, is that correct? A. There were fifty shares of the preferred, I think, of ten dollars a share, or, rather, there was five thousand dollars' worth of the

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preferred, of the par value of ten dollars a share. That would make five hundred shares, I suppose.

Q. And how many shares of the common? A. I think I got an equal amount of the common.

Q. That would be a thousand shares, would it? A. That is what it would be —

Chairman Thompson.— That is what it is.

Mr. Wood.— Yes, I guess it is.

Chairman Thompson.— Did you buy transfer tax stamps for that stock?

Mr. Wood.— I think the thing was put on.

Examination by Senator Lawson:

Q. You think it was? A. To the best of my recollection, it was.

Q. You know what stock transfer stamps cost per hundred? A. Two cents a share.

Q. A thousand shares would be twenty dollars? A. Two cents a share on the par value of a hundred dollars.

Q. That would be twenty dollars, would it, stamp tax? A. No, I don't think it would. I don't think so.

Q. Well, how much would it be? A. About two dollars.

Q. Two dollars on a thousand shares? A. Yes.

Chairman Thompson.— How do you account for that? Through obsolescence?

Mr. Wood.— Depreciation or inadequacy.

Q. What does the Stamp Law say? A. It calls for two cents on the share par value of a hundred. Therefore, if it was par value ten dollars, it would not be as much as a hundred; it would be one-tenth of it.

Q. It says two dollars per hundred? A. Yes.

Q. The law? A. Yes. Two dollars on a hundred dollars par value. This is only ten dollars par value.

Q. How do you figure out the difference between two cents a share for ten dollars par value, and two dollars for a hundred dollars par value? A. Because units are different. You take a

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unit of a hundred dollars par value, two cents a share. When you take a tenth of that, there will be only one-tenth of the amount of the tax.

Q. How much was the tax on these one thousand shares? A. I think it would be two dollars.

Q. It would be two dollars? A. Yes.

Q. Well, did you pay two dollars? A. I think the stamps were.

Q. For those stamps? A. I think the stamps were put on.

Q. Did you put them on? A. I don't remember whether I did or not. I think they were put on.

Q. Did you cancel them with your initials? A. I don't remember that. If I put them on, they were canceled.

Q. Did you cancel them, the owner of the stock? A. I don't remember whether I did or not.

Q. The law says the seller shall cancel. A. Somebody has got to put them on. Doesn't make any difference whether it is the seller or purchaser.

Chairman Thompson.— He asked, did you put them on.

Mr. Wood.— I don't remember. I am quite certain they were put on.

Chairman Thompson.— Who paid for them?

Mr. Wood.— I imagine Mr. Mahar put them on.

Chairman Thompson.— You did not pay for them?

Mr. Wood.— I am not sure whether I gave him that money or not.

Chairman Thompson.— If you did give him the money, you are a dollar in the hole, aren't you?

Mr. Wood.— That's right.

Examination by Senator Lawson:

Q. Do you know whether he canceled the stamps with his initials? A. No, I do not. I don't remember that.

Q. You did not cancel the stamps? A. I don't remember whether I did or not.

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Q. You know the law provides that the seller shall affix the stamps and cancel them? A. I don't know whether the seller has to do it or not. I know the law provides they have to be put on.

Q. I suggest that you give us that information as to what the law does provide. A. Yes.

Chairman Thompson.— You will see Mr. Mahar does not put those stamps on between now and to-morrow morning?

Mr. Wood.— I will, sir.

By Mr. Smith:

Q. What other stocks, if any, did you divest or attempt to divest yourself of between May 1, 1914, and June 1, 1914? A. I don't think I had any other stocks to divest myself of. I know I did not.

Chairman Thompson.— Did you hold any other stock at that time?

Mr. Wood.— No, sir.

Chairman Thompson.— What?

Mr. Wood.— No, sir. I had construction company stocks. I thought you meant railroad stocks.

Chairman Thompson.— What was that?

Mr. Wood.— That was a small construction company I had an interest in. I sold that out.

Chairman Thompson.— When was that?

Mr. Wood.—About the end of May.

Q. Of 1914? A. Yes.

Q. Were you a director or officer in that concern? A. I was president of it, yes, sir.

Q. And had forgotten it in connection with your disclosure here up to now? A. Yes. I thought you were talking about railroad stocks or public utility stocks of any kind.

Q. No. I asked you of what other stocks you divested or attempted to divest yourself from May 1st to June 1st. A. That was the only one.

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Q. You did have some more? A. Yes. There was a thousand dollars of that stock par value.

Chairman Thompson.— That is the Northwestern Construction Company?

Mr. Wood.— Yes, sir.

Q. And you were president of that concern? A. Yes, sir.

Q. And had been president how long? A. I think it was in the neighborhood of 1900. Fifteen years.

Q. You had been president of it fifteen years? A. Yes.

Q. And the total capitalization was how much? A. A thousand dollars.

Q. The total capitalization? A. Forty shares at twenty-five dollars each.

Q. And you had how much of it? A. I owned it all. There was a couple of shares in directors' names, but I owned all the stock.

Q. Well, who were the directors? A. I think at that time there was Edward C. Roberts, who was one of the employees, and Albert E. Perry, who was another one of my employees.

Q. What employment did the first-named have? A. Why, Roberts — let me see. He was not working for me at the time. He was working for the Columbia Machine Works over in Brooklyn. He had worked for me — had worked for the company, and he left us six months before.

Chairman Thompson.— We will take an elastic recess, long enough to announce the presence of Senator Walton, and welcome him here, and invite him to a seat at the head of the table.

Senator Walton.— I thank you.

Q. During these fifteen years, while Mr. Roberts was a director and employee of yours, what position did he occupy? A. He used to work for Wood & Havemeyer, and then he worked for the Northwestern Construction Company, and left us about six months before, and worked for the Columbia Machine Works in Brooklyn.

Q. And he was an incorporator as well as a director? A. I think he was an incorporator. I won't be positive about that.

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Q. The name of the second man was Perry? A. As I remember it. They were employees that I put in there.

Q. What position did Mr. Perry occupy? A. He used to be with Wood & Havemeyer, and when we dissolved he went with me.

Q. And is he associated with you in any way? A. No, not now.

Q. And what was the character of operation of this Northwestern Construction Company? A. Why, in the early days, it did a little contract work, and then it held some property in its name that I owned in the Bronx, and then for about five or six years it did not do anything. I just held it there. It was not active in any corporate way, and then later on, it acquired an interest in some battery patents, primary battery patents, which were later declared an infringement by the United States Circuit Court.

Q. When was that declaration by the United States Circuit Court? A. Let me see. I guess it was somewheres around 1912, I think it was.

Q. Has the company accepted that determination? A. Yes.

Q. What was the character of its construction operations or contract operations? A. Regulating and grading, and then it did some building.

Q. Private houses or public? A. Private houses.

Q. Private house building? A. Yes.

Q. And on this property that was owned in the Bronx? A. That is all disposed of.

Q. I say building on that property? A. Yes, that's right.

Q. And the sale of the resultant construction? A. Yes.

Q. And the property was disposed of finally in bulk or the balance of it? A. From time to time.

Q. And who is the present owner of that property? Individual owners? A. I say there is a number of them. We owned some lots up on 183rd street and University Heights.

Q. Is there any company or corporation owning any portion of that property at the present time? A. No, not as far as I know.

Q. And the Northwestern Construction Company made no disposition of any part of it to an incorporated company or association? A. It sold it all to individuals.

Q. At the time in May that you made the disposition of this stock, to whom did you dispose of it? A. Why, I disposed of it

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first to my brother, and he disposed of it afterwards to a man named Banks, William C. Banks.

Q. How long did your brother hold it? A. Why, I don't believe he held it over a week or two, if he held it that long. Just a couple of days.

Q. How much did he pay you for it? A. I owed him some money and I turned it over to him for that money, and he sold it, I think, for three thousand dollars.

Q. As an entire payment of the indebtedness you owed him? A. No. I owed him some money and I turned it over in part payment, and he sold it for three thousand dollars, and he has since collected all the money on it.

Q. How much did you charge off at the time of the transfer of the debt to your brother? A. Three thousand dollars, I think it was.

Q. Did you understand at the time that you transferred it to him, that the consideration between you and your brother was to be three thousand dollars? A. It was to be in consideration of what he could get for it, and he got three thousand dollars, and it has all been paid up.

Q. You turned it over to him to get what he could for it? A. Yes.

Q. And at the time of the transfer there was no consideration? A. Well, the consideration was he was to apply what he could get for it on what I owned him.

Q. What was the nature of the business of this company? What did they do? A. They had an interest in some patents.

Q. Patents on what? A. Connectors and fuses.

Q. What? A. Electrical fuses.

Q. Sold to street railroads and electrical railroads generally? A. And I wanted to get out of it, and dispose of it entirely.

Chairman Thompson.— The whole of its business was in selling those kind of appliances to electric roads, that is transportation companies?

Mr. Wood.— Yes, sir.

Chairman Thompson.—And did they do business here in the city?

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Mr. Wood.— Yes, sir, they did.

Examination by Chairman Thompson:

Q. Do they now? A. No, the company is out of existence. It is wound up. They sold the patents and it has been wound up.

Q. Whom did they sell the patents to? A. They sold the patents to William C. Banks.

Q. Is he running the company? A. He is not running that company. He is in business.

Q. Does he operate it alone? A. Well, he is president of his company. He has other people.

Q. What is the name of the company? A. The N. W. Equipment Company.

Q. What does the N. W. stand for? A. It is just N. W., that is the corporate name.

Q. He still continues the same business of selling electrical equipment? A. He continues a business of that, and he bought the patents of the Northwestern Construction Company.

Q. What is the address of that company? A. 30 Church street.

Q. And that is where their office is? A. Yes.

Q. Did he buy the patents, or did he buy the stock? A. He bought the stock, and any patents or interest in any patents that I had had — I had an interest in some patents, and I turned the whole thing over.

Q. Did you make a bill of sale of that transaction? A. Yes, sir.

Q. Have you got it? A. I have got it. I haven't it here.

Q. How long will it take you to get that? A. I don't think I can get it before to-morrow morning.

Q. What luck did you have in finding Mr. Mahar? A. He was not at his office and they did not expect him back to-day, and his house did not answer.

Q. Where did you telephone from? A. I went up to Warren Leslie's office.

Q. When did you see Mr. Mahar last? A. Let's see. I met him. He was up in the hallway of the Commission, and I said just "How do you do?" to him a couple of weeks ago.

Q. You don't remember the exact date of that? A. No, I do not. I was just going down in the elevator.

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Q. Wasn't it about the time that the question of McCall having stock was agitated here before this Committee? A. No, not as I remember.

Chairman Thompson.— I will ask you to produce to-morrow morning this bill of sale.

By Mr. Smith:

Q. As a matter of precaution, Commissioner, what other stock did you divest or attempt to divest yourself of between May 1 and June 1, 1914? A. That is all. Just the Northwestern Construction and Sanitary stock.

Chairman Thompson.— Has the Northwestern any relation to the Southwestern, and so on?

Mr. Wood.— No. You are thinking of the Northeastern. No. It has absolutely no relation to any other company. It had a contract with the Columbia Machine Works back last February or around January, 1914. It did its manufacturing for it. That is the only one.

NELSON J. WATERBURY, sworn as a witness, testified as follows:

Direct examination by Mr. Smith:

Q. Mr. Waterbury, you are the president of the Railroad and Steamboat Supply Company? A. Yes.

Q. That is the correct name of the concern? A. Yes.

Q. What is the correct name? A. Railroad, Steamboat Sanitary Supply Company.

Q. How long have you been president of that concern? A. Since its organization.

Q. And when it was organized? A. As near as I remember, about four years ago. I cannot go into dates, because I don't remember. Early in 1912, as I remember it.

Q. And who were the other officers? A. Mr. Streeter is vice-president, and Mr. Henry Weston is vice-president. Mr. W. R. Townsend, secretary and treasurer. Mr. R. W. Geer is assistant secretary and treasurer.

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Q. And who not named among the directors? A. Mr. C. C. Tagatoff. That company is really so dead I am trying to think who else was director. I don't think we have any other directors.

Q. And how long has it been practically dead or so near dead? A. Well, it has been practically dead I should say for upward — we have been trying to bring it to life for upwards of two years.

Senator Lawson.— The company been legally dissolved?

Mr. Waterbury.— No, it is still in existence.

Senator Thompson.— What company are you talking about now?

Mr. Waterbury.— My company, Railroad & Steamboat Supply Company.

Q. At any time during its existence of four years, has it had any dealings with the American Sanitary Supply Company? A. Not that company, no. I have.

Q. As an individual? A. As an individual.

Q. And as an individual, what dealings have you had with the American Sanitary Supply Company during the last four years? A. I hold a contract with them now which I entered into with them in January, 1915, for the right to use their patents on the payment of a royalty.

Q. And how long had you been negotiating with regard to that contract for royalty compensation? A. Well, that was a renewal of a contract which I took from them. Strike that out. That was a superseding contract to a previous one that I had with them, which, as near as I recollect, was entered into about a year before.

Q. And was the year before contract an original arrangement? A. I don't think I understand your question.

Q. Was the contract that was entered into the year before an original arrangement, or was that also a renewal of a prior contract? A. Well, if you want to go back into the ancient history, I can't answer questions. There is nothing to it. Originally I had a contract, about four years ago, with the American Sanitary Supply Company, and they had a certain right to cancel it, which they did. They lost a lot of money and I lost a lot of money

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developing the machines. Why, as I recollect it, there was no relation at all between us. A young man, Mr. Mahar, is president of the company, wanted to get out of the business, and came to me and wanted me to take the machines again.

Q. That was about what date? A. That is what I told you. That was as early as 1912 — where I said twelve, that should be thirteen.

Q. Early in 1913? A. Yes. Now, Senator, I have made a mistake. Where I have used the word 1912, it should have been 1913, and where I have used 1913, it should have been 1914; I am speaking from memory, so if you will just make those alterations.

Q. So that after this delay of a year in the early part of 1913, Mr. Mahar came to you again, wanting you to take the machine? A. Why, I should say so. I should say he came to me in the latter part of 1912, after two or three months of negotiation, as I recollect. I am speaking from memory. I have had so many other things, they did not impress themselves very seriously on my memory.

Q. The negotiations into a contract for a year was in the early part of 1913; is that correct? A. Speaking entirely from memory, I think it was a six months' contract, with the right on my part to renew it on certain conditions being complied with. That is as near as I can remember.

Q. Did you renew it? A. No. I answered your question. I said we had a superseding contract on entirely different terms.

Q. At the end of the six months' period? A. No.

Q. At what time? A. I am telling you, in January, 1914, as near as I can recollect.

Q. The superseding contract was subject to cancellation? A. Yes.

Q. Was it cancelled? A. It is in existence to-day between myself and that company.

Q. By reason of the renewal of which you speak? A. No, by reason of my paying the royalties it called for.

Q. And those royalties had been paid since what time? A. Under the superseding contract?

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Q. Yes. A. From the time the contract called for, the time of its execution. I do not mean on that day, but I mean subsequent, as the contract provided for, but we make them monthly payments. My recollection is we have always paid our royalties. We have sent them a check this month.

Q. What amount of check this month? A. Very small. Under thirty dollars. I don't remember.

Q. How much have they amounted to from time to time? A. Well, I should say that we have paid them in royalties since we first had their machines back, in the neighborhood of fifteen hundred dollars. That, I want to say, is a guess.

Q. And after acquiring possession of that contract, Mr. Waterbury, what did you do, operate it as an individual? A. I am operating it as an individual now, and loaning the machines to my company. I have a matter of reorganization under circumstances in which this American Sanitary Supply Company is in no way interested. Their connection, except as to royalty. I have no connection with them except to pay them a royalty on their patents. I know nothing about the other stockholders or business or anything connected with it.

Chairman Thompson.— You know Mr. Wood in connection with the company?

Mr. Waterbury.— I only know by hearsay. I think I met Mr. Wood once at a directors' meeting, once. You were there that day, weren't you, when you made the fatal mistake of canceling that option?

Q. Where was that directors' meeting held? A. I think 35 Sixth avenue. I think at that time it was the office of the American Sanitary Supply Company.

Q. Did you ever meet Mr. Wood at a club in connection with this matter? A. He is a member of my club, and I have often talked with him, as you talk with him, about things in the club. I never had any negotiations with him. All my negotiations were with Mr. John A. Mahar.

Q. About how many times have you met Mr. Wood in the last two years, in the abstract? A. In a social way, do you mean?

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Q. To meet him and say "How do you do" at the club? A. In the last two years, I should say four times.

Examination by Chairman Thompson:

Q. Who else do you know in relation to the American Sanitary Supply Company? A. Mr. John A. Mahar I had all our negotiations with.

Q. And he is the son of Edward A. Mahar, the president of the Union Railway Company? A. Yes. You appreciate that we are not in any way interested in the American Sanitary Supply Company.

Q. Except with your agreement you had last January and the agreement of January before? A. We are simply paying our royalties.

Q. You were subpoenaed to produce those agreements, were you not? A. No.

Q. Weren't you? A. No. I have been very technical, because I would have told you why I didn't produce them. We were asked to produce all the papers between the American Sanitary Supply Company and —

Q. I would like you to produce the one of January, 1914. A. I think I tore it up.

Q. But you have the one of 1915? A. Yes, but I am going to ask you, Senator, not to put it on the record.

Q. I can't agree to that. A. Well, all right. It is simply a simple royalty bargain.

Q. Will you send for it? A. Yes.

Q. Right away? A. No.

Q. Where is it? A. Tarrytown. I cannot produce it before Monday.

Q. I would like it to-morrow. A. I am sorry I cannot produce it. I am very sorry I did not know anything about it.

Q. I will give you an automobile to go and get it this afternoon. A. You are going to have Mr. Wood here to-day. My nephew will produce it here to-morrow.

Q. Will you have your nephew produce it to-morrow morning? A. Yes.

Q. You will agree to produce it to-morrow morning, either by yourself or nephew? A. I want to say to you as a lawyer, that I

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very much doubt the power of the Legislative Committee to go beyond the ownership of Mr. Wood. Mr. Wood owns no stock of any kind or nature in my company; and I do not see how our private business can be brought into this investigation.

Q. It is very material in this way. It shows a relationship between your company and the American Sanitary Supply Company. A. Between me. I admit that.

Q. Mr. Wood has already testified he has got shares of stock in the American Sanitary Supply Company that cost him five thousand dollars, that he sold for one dollar, and he don't know whether he got a dollar or whether he lost a dollar by the transaction, and he has sworn that the American Sanitary Supply Company did not have anything at all, was not worth anything at all. Now, it becomes quite important. A. I think he is right.

Q. Now, it becomes quite important. A. I hope it won't be always so.

Q. This agreement becomes quite important. Of course if you want to test the power of this Committee —— A. I don't want to test anything. I am willing to show what they pay us, and that is the only thing you are interested in. I know there is something in there agreeing to pay them one-tenth of a cent per package. What time are you going to meet?

Q. Ten o'clock. A. I have been before legislative committees, and I have been to Albany many a time — does that mean 10 to 11?

Q. We hope to be here sharp to-morrow at 10. A. I have an appointment at ten o'clock and I want to be back there.

Q. Do you want a subpœna for that paper? A. No, I don't want a subpoena for that paper. I don't object to you gentlemen reading the paper. There is nothing criminal in it, and I can't go to jail for it. We do not practice law down here that way. The American Sanitary and Supply Company to-day has given me a personal agreement. On a reorganization, it may become affected, and the whole thing may drop. I don't know.

Senator Foley.— Certain newspaper reports this morning quoted me in an interview as to the effect of the testimony of Mr. Polk given on Wednesday. I stated only that an investigation of the true facts should be made by this Committee, but that

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such investigation should await the restoration to health of Mayor Mitchel. No other statement was made by me.

Chairman Thompson (to Commissioner Wood).— You can be excused, Commissioner, until 10 o'clock to-morrow morning, and will you bring those contracts as to this construction company?

Mr. Wood.— I will if I can.

Chairman Thompson.— I will make this much of a statement. There is a subpoena issued, and the person to whom it is issued has not yet made up their mind to comply with it, because it was returnable at a time before the present session. Now, if they do not make up their mind to comply with it within the next few minutes, we will stay until that subpoena is served and return to-night, even if it is midnight.

(Recess taken at this time.)

AFTER RECESS

SEWARD PROSSER, sworn as a witness:

By Chairman Thompson:

Q. I understand you are the president of the Bankers' Trust Company? A. That is right.

Q. And a subpoena has been served upon you to which you have responded and appeared before this Committee? A. Yes.

Q. Was the subpoena served on you last Tuesday? A. No.

Q. Did you know of the service of the subpoena by this Committee last Tuesday? A. I never heard of it.

Q. I will state for your information that a subpoena was issued by this Committee last Tuesday, requiring the production of certain books, papers and documents affecting certain accounts in your institution; that with that subpoena we sent out expert accountant, Mr. Perley Morse, and access to these books and accounts was given to Mr. Perley Morse, for the remainder of the day, Tuesday, and all day Wednesday. But the examination was not finished, and this morning Mr. Morse and his assistants were

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not permitted to look at your books at all. Now, this subpoena served on you requires the production of certain books and papers. Is that correct? A. That is, as I read it.

Q. Well, we would like to know whether you are going to produce those books and papers? A. Why, it is our purpose to comply with the subpoena served on us.

Q. When? A. I haven't read even the contents in detail, even of your subpoena, but it looked to me, I think it called for pretty nearly all of them, which would be rather difficult.

Q. "Whereas certain books of the Bankers' Trust Company containing bank and confidential transactions of any kind or character by or with Edward E. McCall, Ella Gaynor McCall, or J. P. McCall, special, jointly or as individuals, and all checks, vouchers, stock certificates or stock accounts, by or with Edward E. McCall, Ella Gaynor McCall, J. P. McCall, special, and all correspondence pertaining thereto." A. I might state that subpoena was served somewhere around half past five to-day, and my information about this is absolutely nil. I don't know a thing about it. It has never come to my notice.

Q. Do you mean to say that Mr. Morse has been in your bank last Tuesday and last Wednesday, on these very matters, and you did not know anything about it? A. Absolutely not.

Q. What officer for your institution was responsible for his presence there Wednesday and Tuesday, and refused him access to these documents to-day? A. I do not even know that.

Q. That is not material, probably; but you have now been subpoenaed to produce these books and documents? A. Yes, sir.

Q. The Committee would like to know whether you intend to obey it? A. That is our purpose. It cannot be done to-night. You cannot get into a banking institution after the bank is closed, unless you are a jail bird, and get it. I don't even know the combination myself.

Q. Is there any way of getting into those vaults to-night? A. I suppose there must be, but I don't know.

Q. Now, will you just take Mr. Morse and go down there and get these books and let him go ahead? A. That is not the point. I suppose there is a system of doing that, but I never had occasion to.

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Q. I have quarrelled all the afternoon with a Public Service Commissioner that did not answer to suit me. Now, this may be a good clever move on his part. I don't know. We are not in the habit of doing things up in Niagara county in just this way, and I don't propose you shall do it with this Committee. A. I am afraid I have made you think ——

Q. Yes, I think you are trying to stall this investigation, sir, and that is exactly what I think, and your attorney sitting over there smiling about it, makes me think that he thinks he is clever. A. Now, what is it you would like me to do?

Q. I would like you to produce those books and documents, effects and papers that you know perfectly well we want, and I would like you to do it to-night. A. I don't know how to do it.

Q. You say it can't be done? A. I say I presume it possibly can, but I don't know how to go about it.

Q. Haven't you got somebody in your employ that does? A. With these vaults that are locked and under the system of time locks and all that, the combinations are not — as I understand.

Q. I am perfectly willing to have you wait until to-morrow. We want those books, and we want them to-morrow morning at 9 o'clock, and if they are obtainable and our man can go in there, all right. I don't want any more stalling, and we are not here to be tampered with in this matter. If it was a new notice, I should not feel the way I do. A. It is not the same subpoena that was served before, as my counsel tells me. I have known of this for about twenty minutes.

Q. But it is rather a contempt of the Legislative Committee, I think, but it may be you don't know personally about it, but your institution does, and when you have let the man in, as has been the case, Tuesday afternoon, and all day Wednesday, and hold it up all day through technical and various promises that it will be taken care of, and then to find all those things in the vault when we do get you —— A. You are talking about something I don't know anything about.

Q. That may be true. A. And if there had been reasons why it has been held up, I don't know anything about it. If the reasons were good and sufficient and under advice, I would want to look into those things before I said anything here to the contrary.

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Q. I will take your word if you say you will produce those books to-morrow at 10 o'clock. A. Well, I want to look into the situation and see what it is. You say these people have been doing business around here all this time, and I want to find out about it.

Q. I will tell you the information is correct. A. I have no doubt your information is very accurate. You say 9 o'clock?

Q. No, 10 o'clock will be satisfactory, if you say the books will be available. A. Counsel just says it is proper you should be assured that it is our purpose to do everything we will assure you that is proper.

Q. Do you think it is proper to produce those books to-morrow at 10 o'clock? A. I can't tell you whether it is proper. I don't say whether it is not proper. I should have time to look into it if the thing has been going on for a week in my institution.

Q. Is there any objection to our representative being here to-morrow, being at the bank when the time locks deliver the vaults to the banking officials, so that he may see that these books which he has been examining come from the vaults? A. I say this to you gentlemen. There won't be any trouble getting them, if there isn't some angle to it that I don't understand.

Q. There is no objection to that feature of it, at least, because if the books show in the vaults, we are perfectly willing to take them as they are in the vaults. A. Accept my assurance they are all in the vaults.

Q. Will there be any question raised to-morrow morning, as to the form of the subpoena, it being returnable forthwith this afternoon, and not to-morrow at 9 or 10 o'clock? A. We are not raising any technicality, and have not.

Q. You won't raise that? A. Of course not.

Chairman Thompson.— We will suspend until to-morrow at 10 o'clock, and you are directed to produce those books to Mr. Morse at his office, or to produce them here at 10 o'clock, if you do not produce them at 9.

Mr. Prosser.— May I say this: This is a matter which I have not really touched on at all.

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Chairman Thompson.— But you don't blame me for getting a little hot about this, the way it has come about?

Mr. Prosser.— I do not blame a man for getting hot. But will it serve your purposes just as well, if some officer of my company, who did know such a thing, appeared here by my request? I am going off on a shooting trip with five or six men.

Chairman Thompson.— The point I made in connection with the 9 o'clock proposition, it might develop with Mr. Morse being there, that some of these books they propose to bring might be found unnecessary, and he could sort out at 9 o'clock the books that would be required at 10.

I want to say this: That personally it made me feel rather provoked that these liberties would be taken in this way, and this Committee has had the day spoiled largely, on account of the situation, and I, however, hoped that in this matter I would not be required to allow it to become public until these matters were thoroughly investigated, and I hoped that you people would not take any such course, as would require me to, because it is not a matter that ought to be made public. It is important until after our information was consummated, and I am sorry that had to be done. I did not see any other course to require these books, except to ask you to come here and obey the subpoena. I did hope our expert could have gone through these things without being bound to take this course.

Mr. Prosser.— You have been very considerate, I think.

Chairman Thompson.— We have tried to do this, and out of consideration for the man whose account is being examined in your bank, and hoped we might be, and which I think yet will be found to-morrow will be found the best. You can see yourself now that deductions may be drawn that perhaps the facts do not warrant, and I do not like to draw those deductions. I rather have the facts, and we will have the facts in time, because the administration of our law requires them to be brought forth some time, so I will adjourn the proceeding until to-morrow morning at 10 o'clock, with the understanding that some officer of your

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institution is to appear with the books, unless you see fit to give Mr. Morse access in appearing at 9 o'clock, in which case you needn't appear.

Whereupon the Committee adjourned to meet at the same place on the 27th day of November, 1915, at 10 o'clock A. M.

NOVEMBER 27, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Meeting called to order pursuant to adjournment at 10 o'clock A. M.

The Chairman.— The Committee will come to order. We will take an elastic recess of ten minutes.

AFTER RECESS

WILLIAM NORTH DUANE, sworn as a witness, testified as follows:

Direct Examination by Mr. Smith:

Q. Mr. Duane, you are connected with the Bankers' Trust Company? A. Yes, sir.

Q. That is the proper title of the concern? A. Bankers' Trust Company.

Q. And in what capacity, please? A. Vice-president.

Q. For how long a period? A. Since 1912, the spring of 1912.

Q. Do you appear before this Committee in answer to a subpoena issued for the production of certain books and papers and records? A. I so understand.

Q. Well, we want you to have a pretty good knowledge of it; do you? A. I do.

Q. And you know that for several days past, there has been a partial examination going on of the accounts of certain people in your trust company's office?

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Chairman Thompson.— Made by Mr. Morse on our behalf.

A. I am.

Q. And that examination has been conducted by Mr. Morse and his assistants? A. I met Mr. Morse there.

Q. And you have submitted certain books and records for the purpose of that examination, during the course of the last few days? A. Yes, sir.

Q. And there has come a time when Mr. Morse asked for certain books which you refused to give to him? A. As far as I understand, we have submitted to Mr. Morse and his representative ——

Q. Just a moment. Did there come a time when there were certain books requested by Mr. Morse that you refused to present to him or permit him to examine?

Chairman Thompson.— Just let him state the situation.

A. I understand there was one book, not several books, that there was one book, which we refused to give him. We gave him all the papers, all the documents, and the records that had to do with this case, canceled checks. We gave him everything.

Examination by Chairman Thompson:

Q. Well, put it that way, with the exception of one book? A. The depositors' ledger. That book we do not consider we are called upon to deliver to him.

Q. So the position of the Bankers' Trust Company now is that our accountant may have access to all the books, canceled checks, correspondence and stock stubs, or whatever there is except this deposit ledger, all except this deposit ledger you have consented that Mr. Morse may have access and go along? A. I understand they have had access to all the books and papers and records that have to do with this, except the one book.

Q. And you give him access and they have access now? A. I understand they have them now.

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Q. And you have no objection to his continuing his examination in reference to all these documents that we have mentioned, except this deposit ledger? A. In regard to that, we would act under advice of counsel.

Q. Now, I am going to be frank with you as I was with the president of your company last night. I am satisfied and I have a right to be satisfied from the way things have happened down there that your concern is attempting to delay this examination for a few days, and I do not like the idea that you come in here and say that you have given access, but not promise that the examination may continue for the reason that I know just as well as you know that we might take a recess at noon, whereupon you would fire Mr. Morse and his assistants out of your bank again until Monday or Tuesday or some other time. Now, all we want is the truth down there, and if we are entitled to it next Wednesday, we are entitled to it to-day, and we want it to-day. Now there is a whole lot of people connected with this thing, not myself, because I don't know anything about a football game, there is a lot of people would like to go to the football game, but with your attitude, you require us to stay here and issue a subpoena.

(At this point Hartfield, counsel for the Bankers' Trust Company, made a statement, and a colloquy ensued between the counsel for the trust company and the Chairman of the Committee, which was later on expunged from the record, by direction of the Chairman.)

ROBERT C. WOOD on the stand.

Chairman Thompson.— Mr. Wood wants to correct his statement, I am told, and we will give him all the time he wants.

Mr. Wood.— If I may be in order, Mr. Chairman, I find that I had sixty-six shares, instead of fifty, of the par value of one hundred, or rather sixty-six shares, par value of ten dollars, of the preferred stock of the American Sanitary Supply Company, and

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I had it and disposed of it. And also that I disposed of more common than what I thought yesterday that I had. I believe there was about five to one of common as of the preferred, which I bought for the five thousand dollars.

Examination by Mr. Smith:

Q. That was thirty-three hundred shares of ten-dollar common? A. Yes, sir, as I understand; and I got in touch with Mr. Mahar last night, and he is here now, and Mr. Banks will come over any time you want him with those receipts of the Northwestern Construction Company. Shall I telephone to him?

The Chairman.— Yes.

Q. Now, just a moment. Did you make any mistake about your City Interborough holdings? A. Why, I have not been able to look them up yet.

Q. I understand you had something like three thousand shares instead of two? A. That is my recollection — three thousand instead of two.

Q. And what proportion did you transfer those? A. I think it was four to one.

Q. That is four shares of stock? A. To one bond.

Q. Of one hundred dollar par value? A. No, of a thousand dollars.

Q. Forty shares? A. Forty shares.

Q. And at what were those bonds selling at the time you made the transfer? A. There was never any public sale of those bonds. They are all held at present by the Third Avenue Company, and they are up as collateral, as I understand it, under their refunding agreement.

Q. What was their value at that time, if you had knowledge of their then value? A. Well, I suppose the value would be the market value, but there was not any market value, but I sold them at 87½.

Q. At 87½? A. Yes.

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Q. And you have no value to fix on them at the time of the transfer? A. That is the only value that I know of.

Q. Didn't that bear a value of about 78, and so considered and so discussed and so agreed? A. I think that they have; the Third Avenue refunding bond. There was never any market value on these City Interborough bonds, never any market.

Examination by Chairman Thompson:

Q. In short, that transaction, Mr. Wood, you went to the Board of Aldermen and you got a franchise for the railroad, you and Havemeyer and your assistants there in the office, didn't you? A. Mr. Fransiola was with us. Yes, I was president of the company that applied to the Board of Aldermen.

Q. And you got the franchise? A. The company got it.

Q. That was for what company? A. The New York City Interborough.

Q. That was the name of the company? A. Yes, sir.

Q. Now, that company, the tracks you propose to lay, paralleled the tracks of another company up there? A. No.

Q. In some degree? A. It might in some degree.

Q. What company was that? A. The Union Railway Company up there and Southern Boulevard and Bronx Traction.

Q. Now, that Union Railway and Southern Boulevard and Bronx Traction came to the ownership of the Third Avenue, didn't they? A. Yes, they were acquired about 1898, I think.

Q. So that really your franchise became, if it were worked out, a competitive line to the Third Avenue holdings? A. It operated in the same territory.

Q. Well, it became a competitor if it was carried out? A. Some of the lines were distinctly competitive and others of the lines were cross lines and did not have any.

Q. And Mr. Edward A. Mahar, senior, at that time was connected with this Third Avenue and Union Railway of the Bronx, wasn't he? A. He was connected with the Union Railway.

Q. And later became connected with the Third avenue, didn't he? A. Yes.

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Q. And the 42nd Street, Manhattanville & St. Nicholas Avenue Railroad? A. Yes, 1907, I think it was.

Q. And he is now connected with that railroad? A. Yes.

Q. They are part of the same system and same ownership? A. Yes.

Q. Now, after you got this franchise, you applied for a certificate of convenience and necessity to the Railroad Commission that then existed, is that correct? A. That is correct.

Q. And they refused you the certificate? A. You say "you." The company applied.

Q. You acted for the company, and the company was made out of yourself and your office boy? A. No. We have sold out control to the Interborough.

Q. There was a dissenting opinion later in your appeal to the court written by Justice Hatch, was there not, that set up certain facts? A. I understand there was a written opinion.

Q. Was there any question that Justice Hatch misquoted the facts in any way in his opinion? A. I haven't read it in so many words. I have forgotten what it was.

Q. Did it ever occur to you that Justice Hatch misquoted the facts from the opinion he wrote? A. I don't remember what he wrote.

Q. It is not hardly possible that a Supreme Justice of the Supreme Court would misquote facts? A. I can't say that I agreed with him.

Q. You did not agree with him, but you agreed with the facts stated in his opinion? A. I would have to know the facts.

Q. It was refused by the Railroad Commission on the ground that your deposit was not a bona fide deposit, wasn't that correct? A. No, sir, it isn't it.

Q. And so stated in the opinion by Justice Hatch? A. I didn't think the Railroad Commission brought up that point at all. The Railroad Commission refused the certificate on the ground that the Union Railroad and its allied company, the Traction Company, would fully serve the territory that this road would

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operate in, and the Union Traction Company was a paper corporation, and never built any line, and never done any work, and agreed to pay ten —

Q. The People's Traction Company was your company? A. The New York City Interborough.

Q. Then from this order of the Railroad Commission, denying your application, you appealed, or your company did, to the Appellate Division? A. Yes, got out a writ of certiorari.

Q. Then the Appellate Division reversed the order of the Railroad Commission and ordered the certificate to be granted, didn't it? A. Yes, for that part of the line.

Q. And then an appeal was taken to the Court of Appeals, whereupon the judgment of the Appellate Division was affirmed? A. Yes.

Q. And then you came back and before you built any road, you sold it all out to the Third Avenue Railroad? A. Oh, no. Pardon me. The Interborough held control of it then, and built part of the lines.

Q. The New York City Interborough? A. The Rapid Transit.

Q. You sold what? A. The New York City.

Q. You sold that to the Rapid Transit pending this litigation? A. Yes.

Q. But at the time you sold it you had not build a foot of line or spent a dollar? A. We had expended considerable money.

Q. For litigation and getting franchise? A. And engineers, surveys and various things like that.

Q. But you never had spent a cent for the real construction of a railroad? A. We were not authorized.

Q. Well, you had not? A. No.

Q. And you in that company sold out to the Interborough Rapid Transit Company; is that correct? Now, how much did you get for it, and in what form? A. As I remember it, we got a million, two hundred thousand of stock.

Q. Of the stock of what? A. Stock to be issued.

Q. Of what company? A. Of the New York City Interborough.

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Q. Or the Interborough Rapid Transit? A. No. The New York City Interborough, one hundred and fifty thousand cash and fifty thousand bonds.

Q. And that was paid to you for a syndicate that you represented? A. Yes; it was paid to me representing my associates in the matter.

Q. Now, who were your associates? A. My partner, Havemeyer, and Fransiola, and that was all.

Q. So that this was divided between you and Havemeyer and Fransiola? That is a correct situation? A. Yes.

Q. Now, you afterward disposed of your share of the stock and bonds? A. Yes, I sold them.

Q. Where did you dispose of them, in the open market? A. I sold the bonds to the Interborough under the sinking fund, and the stock, why, I sold to the Third Avenue.

Q. The stock you sold to the Third Avenue, as you testified yesterday, in the conference between yourself and Mr. Whitridge and Mr. Mahar? A. That is it.

Q. That was Mr. Edward A. Mahar, Sr.? A. Yes.

Q. And you have known Mr. Edward A. Mahar, of course, ever since that time? A. I know him, yes.

Q. And you have been confidentially acquainted with him? A. I would not say confidentially. I know him the same as I know dozens of other men.

Q. Well, you had close personal relations with Mr. John Mahar, his son? A. As identified with the American Sanitary Supply Company.

Q. And he got you to invest your five thousand in there, didn't he? A. He asked me to.

Q. And you did? A. Yes.

Q. And through that request, you became a stockholder in the American Sanitary Supply? A. John Mahar asked me to, or he came down to see me.

Q. And when you got ready and made up your mind that the ownership of this stock was inconsistent with your acting as

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Public Service Commissioner, you sent for Mr. Mahar to turn it back to him? A. That is right. That is the only place I could sell it and dispose of it. That was a small corporation.

Q. You had confidence in Mr. Mahar? A. I had known Mr. Mahar for some time.

Q. And you had confidence if the stock should develop to be worth something he would do the proper thing? A. No, sir; I had nothing of the kind. I disposed of it absolutely. Absolutely divested of it.

Q. You divested yourself of it? A. Yes, sir, disposed of it.

Q. Because of the Public Service Commissions Law? A. That's right. I felt that I ought not to hold it, and I disposed of it.

Q. Now, do you remember the details of the transaction where you disposed of it any better than you did yesterday? A. Well, as I remember it, Mr. Mahar handed me that sale slip with a dollar in an envelope and came up to see me. I think it was in the office of the Commission.

Q. At the office of the Commission? A. I think it was that, yes. He gave me that paper there.

Q. That was after you became a Public Service Commissioner? A. Yes, but we arranged before.

Q. Now, Mr. Wood, you were here and you did not have this paper before lunch, and you got it during lunch? A. Yes.

Q. During the time you left here in the lunch hour and the time you came back, did you not go to the office of Mr. Mahar? A. I did not.

Q. Did you see Mr. Mahar during that time? A. I did not.

Examination by Mr. Smith:

Q. Mr. Wood, I am a little bit curious to know what difference it made as to the market for the sale of this stock in view of the fact that you only got a dollar for it — you say Mr. Mahar was the only place you could sell it? A. The only place I could dispose of it. I supposed a dollar represented a consideration, and in order to have the transfer made, you have got to have a consideration.

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Q. Did you furnish the dollar? A. No, sir; I did not.

Examination by Chairman Thompson:

Q. This is the transfer, this paper? A. That is the bill of sale, yes.

Q. That is the paper that transferred the stock? A. No, no. He had the stock before that endorsed in blank.

Q. But this is the transfer, this is the paper that makes the bill of sale? A. Yes.

Q. And there aren't any stamps on this paper? A. I think the stamps could be on the certificate.

Q. The law requires the stamps to be on the certificate. A. I beg your pardon. It can be on the certificate.

Q. Have you looked up the law? A. I have known that for some time.

By Mr. Smith:

Q. Have you any better recollection as to when you endorsed these certificates in blank than you had yesterday? A. No, I don't remember when I did that.

Q. Was it a part of this transaction of sale, or divesting? A. I may have done it before, but I know I — but they are endorsed, I am certain of that.

Q. How do you know? A. Because I remember looking at them when I turned them over.

Q. Have you seen them since? A. No, sir; I have not.

Q. How many pieces of paper were there? A. As I remember it, there were two; one for the preferred shares and one for the common shares.

JOHN A. MAHAR, sworn as a witness, testified as follows:

Examination by Mr. Smith:

Q. Mr. Mahar, you live where? A. 545 West 11th street.

Q. And you were subpoenaed to attend this session of the Committee? A. I was.

Q. When were you subpoenaed? A. About 7:45 last evening.

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Q. And where? A. At my home.

Q. Was or was not that the first knowledge that you had that a subpoena was to be issued for you? A. Why, that was the first knowledge that I had of it, except that somebody had been calling me up at the office. I returned at 5 o'clock, and left no name, and when I read the accounts in the paper going up, I thought perhaps that was what it was. I had no actual knowledge before that time.

Q. Subsequent to the service of the subpoena, where did you go? A. I went down Broadway and met Mr Wood, and talked with him for a few minutes and I dropped in to my father's home for a few minutes, and then went down to Governor's Island to a dance.

The Chairman.— If you go to the football game, you will have a complete week-end.

Mr. Mahar.— I hope to.

Q. Where did you meet Mr. Wood? A. I met Mr. Wood on Broadway between 103rd and 104th street.

Q. By arrangement? A. Yes.

Q. When was the arrangement made? A. About 7 o'clock.

Q. Prior to the service of the subpoena? A. Yes.

Q. And did Mr. Wood tell you what he wanted to see you about? A. No. He said he would like to see me; called me up on the phone and asked me if I would meet him, and I met him.

Q. And when you saw him you told him you had been subpoenaed? A. Yes.

Q. And then, it was not as a result of Mr. Wood's solicitation that you came here? A. No, because I was subpoenaed.

Q. Did he tell you that he wanted you to come? A. He said that he had promised to look me up. His request was unnecessary for I had received the subpoena.

Q. What else did he say? Give us the conversation from the time that he met you. A. He asked some points in connection with the American Sanitary Supply Company. I refreshed his memory on the number of shares of stock that he had, and I also

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told him that he had made a mistake when he said that the American Sanitary Supply Company was organized for the purpose of putting one-cent boxes in cafes and five-cent in railroads.

Chairman Thompson.— How did you know he testified to that?

Mr. Mahar.— I had read it in the paper. The American Sanitary Supply Company was organized solely for the purpose of putting out machines in the cafes and restaurants. They could not put them into railroad trains through a contract they had with the Railroad and Steamboat Supply Company, a contract in which Mr. Wood had no interest.

Chairman Thompson.— You are a little reckless about that statement. The American Supply Company had an agreement with Mr. Waterbury by which they got a royalty.

Mr. Mahar.— The company had that.

Examination by Chairman Thompson:

Q. So when you say "absolutely no interest" you are getting a little extravagant. A. I meant by that he was not a director or stockholder.

Q. That don't justify your statement. A. Then I withdraw the statement. He was not a director or stockholder.

Q. So on the record the Railroad and Steamboat Supply Company, on the record Mr. Wood was in a very good position, so far as the people could see? A. The American Sanitary Supply Company made no attempt to put machines on the railroad until Mr. Waterbury's Railroad and Steamboat Company failed to live up to their contract.

Q. But the American Sanitary Supply Company were a perfectly willing party to the activity of the Railroad and Steamboat Company in placing machines in those places? A. Perfectly, and anxious to profit by it.

Examination by Mr. Smith:

Q. Continue with the conversation at the meeting last night. A. Well, I told him that that I have just been saying, that he had made a mistake when he said the American Sanitary Supply Company was organized to put one type of machines in the cafes

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and another on the railroads. It was not organized for that purpose.

Chairman Thompson.— You started to say they having refused to do certain things.

Q. About no attempt being made to put machines on the railroads until the American Sanitary Supply Company— A. American Sanitary Supply Company made no attempt to put machines on the railroad until the Steamboat Company failed to live up to their contracts or obligation, and then the American Sanitary Supply Company did attempt to get in, but found they could not. Of course Mr. Waterbury, although he had not lived up to his contract with our company, still had contracts with the railroads.

Q. When was this attempt on your part? A. I am not sure; it was in 1913, I think, early part of 1913.

Q. The early part of 1913, so that at that period your company was attempting to get contracts with railroad corporations? A. For a very short time.

Q. Now, continue with the conversation last night when you met Mr. Wood? A. I told Mr. Wood that he had made a mistake in the number of shares of stock that he had; that, instead of having five hundred shares of each, he had six hundred and sixty-six shares of the preferred, and thirty-three hundred and thirty-three shares of common; and then we talked about other subjects that had nothing to do with this affair.

Chairman Thompson.— Did you see Waterbury last night?

Mr. Mahar.— No, sir.

Chairman Thompson.— Or yesterday or to-day?

Mr. Mahar.— No, sir; I have not seen Mr. Waterbury in six weeks, I guess.

Q. Was this conversation on the street entirely or did Mr. Wood accompany you to your father's home? A. No. He came to the 93rd Street subway station, and took the train there. I left him at 93rd street and West End avenue.

Q. Had you the stock certificates with you at that time? A. No, I did not get those until this morning.

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Q. Where were they? A. Why, at the time I got the certificates from Mr. Wood, the American Sanitary Supply Company had no office. At that time I was contract manager for W. P. Seaver, and after getting the certificates from Mr. Wood I brought them up to Mr. Seaver's office and left them in his safe, and I got them from his safe this morning.

Examination by Chairman Thompson:

Q. Who is Mr. Seaver? A. W. P. Seaver. He has a contract here in New York.

Q. What is the name of his company? A. W. P. Seaver, Incorporated.

Q. How are you related with him? A. I am not related. I was his contract manager at that time.

Q. You have an office in his office, don't you? A. No. There was some mail sent there. I dropped in occasionally.

Q. You are a personal friend and have such relations that you use the office when you want it? A. Yes.

Q. And has Mr. Seaver got a subway contract? A. Not that I know of unless he has got one recently.

Q. Hasn't he got the contract for building the approach to the Manhattan Bridge? A. Yes, he had at the time I was with him.

Q. Get that through the Public Service Commission? A. Got that through the Bridge Commission, at least I think he did.

Q. The Public Service Commission had something to do with it? A. I never had anything to do with them when I was manager. I used to consult with Commissioner Cracker.

By Mr. Smith:

Q. Have you those certificates with you now? A. Yes.

Q. Produce them, please. Mr. Mahar, I call your attention to certificate No. 572,666, of the American Sanitary Supply Company, originally issued to Robert C. Wood on the 30th day of September, 1912, signed Bernard Lovett, Tremont N. Brundage, Secretary; endorsed on the back "For value received..... hereby sell, assign and transfer to John A. Mahar.....shares of the capital stock represented by the within certificate, do hereby irrevocably constitute and appoint.....to

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transfer the said stock on the books of the within named corporation, with full power of substitution in the premises. Dated," and follows a date. Did you receive that certificate from Commissioner Robert C. Wood? A. I did.

Q. And then thereafter, did you deliver that paper to him (witness shown paper)? A. I don't remember whether I delivered it or mailed it. I sent it to him, or one way or the other.

Chairman Thompson.— The letter was the other, was it? The facts stated in the letter were true?

Mr. Mahar.— Why, yes.

Chairman Thompson.— So when it said "last Wednesday," that was the truth? A. Why, yes, it was.

Q. The endorsement contains the date as follows: "Dated May 25, 1914. Signed, Robert C. Wood." Was your name in the certificate that I show you at the time that it was delivered? A. Yes. That certificate has not been touched since I received it.

(Offered in evidence and received.)

Q. This is the certificate that I was calling your attention to — has that one been touched? A. Neither one of them has been touched.

(Offered in evidence and received.)

Q. I call your attention to certificate No. 108 for three thousand, three hundred and thirty-three shares of American Sanitary Supply Company common stock, issued to Robert C. Wood on the 30th day of September, 1912. Signed, Bernard Lovett, President, Tremont N. Brundage, Secretary, and endorsed as was the certificate offered in evidence. You received that certificate from Commissioner — received them from Commissioner Wood? A. Together.

Q. And it is in the same condition now as when you received it? A. Yes, sir.

Q. Never has been added to in any way? A. No.

Mr. Smith.— I offer that in evidence.

(Received.)

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Q. Where were you when you received those certificates? A. You mean where was I employed?

Q. No. Where were you physically, actually, at the time that you received those certificates from Commissioner Wood? A. I think I was at the office of the Public Service Commission. It is possible I was in 43 Exchange place, office of Wood & Havemeyer. I don't remember.

Q. You were one or the other? A. One or the other of those two offices.

Q. What was the occasion of your being there at that time? A. Why, I went down to see Judge McCall, to find out if a certain section of the subway was to be re-let. That is, I did not see the Judge. I saw his secretary, Mr. Hickey. I think it was when I was coming from his office that I met Mr. Wood and he told me that he had endorsed the certificates over to me, and that he did not think that he ought to have them, and that he would sell them to me for a dollar. So I took the certificates from him at that time, and I think I offered him a bill, or something of that kind, for which he did not have change. And he said, "Send it to me." And I either sent it to him or brought it to him a few days later.

Q. Mailed it or brought it to him, and you don't remember which? A. No, I don't remember.

Q. Was there any further inquiry on the part of Commissioner Wood for a paper of this kind, any further demand after the sale of the stock, after the delivery of the stock? A. You can see by the letter I sent it to him a day or so after I got the stock.

Chairman Thompson.— You and Mr. Wood are both pretty certain there isn't any envelope in existence with the postmark on to corroborate it as to the time?

Mr. Mahar.— I have not seen it since I sent it to Mr. Wood.

Chairman Thompson (to Mr. Wood).— May I ask Mr. Wood: It would be quite important if you had a postmark on here. Do you suppose you could make a pretty stiff search for an envelope?

Mr. Wood.— I have not seen any envelope since I took that paper out of it. I do not think it is in existence. I am sure it is not.

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Chairman Thompson (to Mr. Wood).— Was there any envelope with it when you got it yesterday?

Mr. Wood.— No. As a matter of fact, a man seldom keeps the envelopes in a business way.

Chairman Thompson.— As a matter of fact, up our way they are a little more careful in keeping —

Mr. Wood.— And there probably are not as many —

Q. The letter which is in evidence, which is your communication to Commissioner Wood, contains the date the 12th of June, 1914? A. Yes.

Q. When in relation to that date did you deliver that paper to Commissioner Wood? A. If I mailed it to him, he probably got it the next day.

Q. I am not discussing probabilities. A. Well, I don't know.

Q. When in relation to that date did you hand that paper to Commissioner Wood? A. I told you before that I did not remember whether I handed it to him or mailed it to him.

Chairman Thompson.— The counsel's question is perfectly intelligent. He asks you when in relation to the date, June 12, you gave it to him.

Mr. Mahar.— Well, I said before that I did not remember whether I mailed it or delivered it. If I mailed it he probably got it the next day.

Q. Now, when, in relation to that date, did Commissioner Wood receive that paper from you? A. I have no idea. If the last question does not suffice.

Chairman Thompson.— Was it before that date?

Mr. Mahar.— No, it was possibly on that date, or later. Depends on what time of the day I mailed it, if I did mail it. However, it was not before that date, if that is what you want to know.

Q. Within what number of days from June 12, 1914, will you swear that Commissioner Wood received that paper from you?

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A. I won't say how many days. I will say if I brought it to him, it may have been two or three days. If I mailed it to him, he must have gotten it by at least the next day. I would be willing to swear that he must have received it before June 20th.

Chairman Thompson.— Will you swear that he did receive it before June 20, 1914?

Mr. Mahar.— I will swear that it was delivered to him, yes, within a week.

Chairman Thompson.— A week of what?

Mr. Mahar.— Within a week of the time it is dated.

Chairman Thompson.— Then you will swear that this letter, this paper with this writing on, was delivered to Commissioner Wood between June 11, 1914 —

Mr. Mahar.— Not between June 11.

Chairman Thompson.— Yes, because it might have been on the 12th — some time between June 11, 1914, and June 19, 1914. You swear to that positively?

Mr. Mahar.— Yes.

Q. When were these certificates delivered? The Wednesday prior to June 12, 1914, or on May 25th, 1914? A. I don't remember when the certicates were delivered, but I imagine from the letter they were delivered on the Wednesday prior to June 12.

Chairman Thompson.— You say you imagine. Haven't you more confidence in your written word than to imagine from it?

Mr. Mahar.— Well, I have confidence in my written word, yes.

Chairman Thompson.— Well, you can swear pretty direct about it.

Q. What is the fact? A. The fact from the letter is that they were delivered to me on the Wednesday prior to June 12th. I don't know whether they were or not.

Q. And possibly in the office of the Public Service Commission? A. Possibly.

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Q. And possibly in Mr. Wood's office? A. 43 Exchange place.

Q. No, his office in the Commission? A. No.

Q. Why not? A. Because I don't believe I have ever been in Mr. Wood's office. I think any time I have ever seen him I have probably met him in the hall.

By Chairman Thompson:

Q. Have you ever met Wood in Seaver's office? A. Why, no. Seaver's contract had nothing to do with the Public Service Commission in any way.

Chairman Thompson.— I understand, but that seems to be your headquarters of the American Sanitary Supply Company.

Mr. Mahar.— The headquarters of the American Sanitary Supply Company seem to be wherever I am. They have no office.

Q. Is there any building in the city of New York showing the sign of the American Sanitary Supply Company at the present time? A. There is, or was a week ago when I last saw it.

Q. Where is it? A. 35 Sixth avenue. Offices occupied by Mr. Waterbury which we did occupy, and he took position March 1, 1914, and has not taken the trouble to change the sign.

Chairman Thompson.— That name still continues in the telephone at that address?

Mr. Mahar.— Possibly; I don't know.

Q. And what other concern occupies the same office? A. I think the Railroad and Steamboat Sanitary Supply Company, this company of Mr. Waterbury's.

Q. This stock passed from your possession when it came into the possession of Commissioner Wood, did it not? A. Passed from the possession, yes. I guess I handed it over to him. It was issued by the company. At that time I was not president of the company, as you can see from the certificate.

Q. And will you tell us the circumstances of that purchase, Mr. Wood having said that it was through your solicitation that he acquired the stock; how did it come about? You tell us. A. Why, at that time I was endeavoring to raise some money for this company, and I went to a number of my friends and a number

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of people who were friends of friends of mine. Among my successful visits was the one to Mr. Wood.

Q. Had you had any previous dealings with Mr. Wood financially? A. None.

Q. Have you had any since? A. No, not since I bought the stock back.

Q. Did you have any gentleman's agreement in regard to this stock or any part of it when the sale was made to you other than the paper writing? A. Absolutely none. I would sell the stock for a reasonable amount the next day.

Q. I have a few more questions on a different proposition. Mr. Mahar, where were you when you made this letter or paper in evidence, your communication? A. Where was I when I wrote it?

Q. Yes. A. I was in W. P. Seaver's office, 322 Fifth avenue. He afterwards moved up to the Grand Central Terminal building.

Q. You are sure of that? A. Yes.

Q. How long had you been in possession of the die and paper which you used in writing this letter? A. Why, I don't know. I bought that paper of Reed & Barton some time ago. They can probably tell you when I bought it.

Q. And did you make more than a single purchase of it? A. No. I think I made two purchases. Couldn't tell when the first purchase was made, because that was when the die was made.

Q. What instrument did you use, a desk pen or fountain pen, in writing it? A. I think I used a desk pen. I am not sure.

Q. And the office ink used in that concern, at that time, or special ink? A. I used the ink that was on my desk, if I used a desk pen, and if I used a fountain pen I used the ink that was in the fountain pen.

Q. And did you fill your fountain pen at the Seaver office? A. I couldn't tell you. I sometimes fill my fountain pen in the office and sometimes at home.

Q. Do you recognize that ink as the kind used in the office? A. I am not an authority on ink. I think it was the ink used in the office. I imagine it is.

Q. At that time having no office of your own? A. I had an office of my own at that time. I was contract manager of W. P. Seaver.

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Q. And did you have any other office? A. No, I had no other office at that time.

Q. The ink that you used at home, where did you purchase that? A. I did not purchase it.

Q. Where did it come from? A. I have no idea. Somebody else in the house purchased it.

Q. Did you use it for copying papers or ordinary writing at home only? A. Ordinary writing.

Q. And did you have any use of copying ink at home? A. Why, I had some of Higgins' ink at home, Higgins' drawing ink.

Q. This is not Higgins' drawing ink? A. No.

Q. Outside of the Higgins' drawing ink, you had no use for copying inks at home? A. No.

Q. And you did use copying ink in the Seaver office? A. Some of the draftsmen use it, I suppose. I did not use any that I know of.

Q. You also had the die on envelopes corresponding to this paper in the Seaver office? A. Yes.

Q. And you are sure that Mr. Wood was not present when this was written? A. I know that he was not present when this was written. I do not believe that Mr. Wood has ever been in Mr. Seaver's office, and that was written in Mr. Seaver's office.

Chairman Thompson.— You say positively that was written in Mr. Seaver's office?

Mr. Mahar.— Yes.

Q. Why can't you tell us in regard to the place of the delivery of the certificates equally well with your knowledge of the place of the writing of that letter, the same transaction; why can't you tell us definitely in regard to the delivery of the certificates as well as your definite knowledge of the place of the writing of this letter? A. Well, because I wrote that letter in my office. I thought that I delivered the certificates at the Public Service Commission's office. I saw in the paper yesterday that Mr. Wood said I delivered it to 43 Exchange place. I am not certain now about it, to be sure that he isn't right.

Q. Was there any discussion of stamps at the time of the transfer of these certificates? A. Mr. Wood asked me if I would put stamps on, and I said I would.

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Chairman Thompson.— Well, they are not on.

Mr. Mahar.— No, they are not. As far as Mr. Wood is concerned, he thought they were on.

Chairman Thompson.— I don't believe you can swear that he thought they were on.

Mr. Mahar.— No more than I told him. I can explain why I did not put them on. The books in connection with this stock were down to 35 Sixth avenue. I brought the certificates back to Seaver's office.

Chairman Thompson.— You might realize this: I think an ordinary State senator, drawing only fifteen hundred dollars a year, would regard the State law that he had in mind like a stamp law, to be of sufficient importance to see that it was complied with in a transaction like this. Now, the duties of a man holding a very responsible position of fifteen thousand dollars a year is very much different. So the fact that Mr. Wood thought they were on does not excuse the thing. They are not on, so that's all there is of that.

Q. I understand you to stay that you delivered these certificates to Mr. Wood when he bought them? A. I did.

Q. The transaction go through you? A. I think so.

Q. He told you to put the stamps on that time, and you did not do it? A. No stamps put on at that time. That was not a sale. The stock was issued.

Q. Don't require a stamp? A. As I understand the law, you do not have to put on stamps when you issue stock. It is only when there is a sale transfer.

Q. Wasn't this stock issued in place of other certificates that had been previously issued by the concern? A. No. That was an original issue.

Q. You are sure of that? A. I am pretty sure of that. Original issue authorized by the inventor of the machine.

Q. When was this company organized? A. '89.

Q. For how much? A. Six hundred thousand dollars; one hundred thousand preferred, and five hundred thousand common.

Q. How much paid up capital? A. It was all paid up. It

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was all paid up in the sense that the stock was given to the inventor of the machine, on the agreement that he would issue twenty-five thousand dollars' worth for working capital.

Chairman Thompson.— How much stock you got?

Mr. Mahar.— Oh, I can't tell you off-hand. Something over a hundred thousand dollars' worth.

Chairman Thompson.— That is something over a hundred thousand dollars par value?

Mr. Mahar.— Par value.

Chairman Thompson.— Who has got the rest of the stock?

Mr. Mahar.— Why, there are about forty-five or fifty stockholders.

Chairman Thompson.— The entire capital of this concern was given to the inventor?

Mr. Mahar.— For his invention.

Q. Under the understanding and agreement that he would issue and place in the open market twenty-five thousand dollars of it for working capital? Is that true? A. Not twenty-five thousand dollars. That he would issue enough to raise twenty-five thousand dollars for working capital.

Q. And you call this an original issue of stock by the company? A. Yes, I call that an original issue.

Q. Did Mr. Wood ask you anything about whether or not it was re-issued stock or original issue of stock when he purchased it? A. No, but I think he understood the situation, as I had been talking about the company and about its prospects to him, what we were attempting to do and what we hoped to do.

Chairman Thompson.— Mr. Mahar, you say there are forty-five or fifty other stockholders? Do you know of any other sales of stock in this company?

Mr. Mahar.— Yes.

Chairman Thompson.— What?

Mr. Mahar.— Yes.

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Examination by Chairman Thompson:

Q. Who? A. You mean to whom was the stock sold?

Q. No. I say do you know of any other sales of stock of stockholders after they got hooked here? A. After they got hooked?

Q. Yes. A. I don't know of any sales. There were no sales made through me. The stock was an original issue.

Q. You don't know of any? A. No.

Q. Was Wood friendly at the time when he turned this stock over to you? A. Yes.

Q. Thought you were a pretty good fellow and nice friend? A. Wood probably looked at it as a business venture; nothing personal.

Q. I ask you if he was friendly? A. Yes.

Q. He did not throw the stock at you? A. Mr. Wood is a gentleman; I do not think he would do that.

Q. You got him into this, you know, didn't you? A. Yes, but Mr. Wood is of age.

Q. You got him in, and you got five thousand dollars of his money? A. No.

Q. But the company, and you have got a hundred thousand? A. It is worth just as much as Mr. Wood's.

Q. You got him for five thousand dollars and he sends it to you, his friend, and he is friendly when he turns it back to you for one dollar? A. Apparently.

Q. And everything is all friendly, even now? He is very friendly about it even now? A. Why, I have no doubt Mr. Wood is a friend of mine.

Q. Even though he has lost forty-nine hundred and ninety-nine dollars? A. Even though he has. He doesn't consider I am to blame for it. This company was formed at the time there was a wave of sanitation around here.

Q. How much did you pay for your stock? A. I didn't pay anything. I got some of my stock originally as a broker. I found I was the only one selling stock, and then I asked to be made a director.

Q. This stock was issued on the basis that certain inventions were to be turned into the company? A. Yes.

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Q. Who was the inventor? A. Bernard Lovett.

Q. Did he get anything out of it? A. He still has some stock, and got some money.

Q. How much did he get in stock? A. I don't know. He got quite a lot.

Q. Did you keep a stock book? A. There was a stock book.

Q. Where is it? A. I think it is at 35 Sixth avenue.

Q. That's the place where the name is on the door? A. Yes.

Q. That is in the possession of the Waterbury Company? A. Yes.

Q. Now, where is this Seaver office, or where was it in June, 1914? A. 322 Fifth avenue.

Q. Is it in the same place yet? A. No.

Q. Where is it now? A. Grand Central Terminal building.

Q. When was it moved there? A. I think shortly after the first of the present year. Perhaps on the first.

Q. You still occupy the office as you did? A. No, I am no longer connected with Seaver, and have not been since the first of the year.

Q. But you have your mail go there for the American Sanitary Supply Company? A. Some mail goes there from people who do not know I have made a change, and they keep it until I come in and get it.

Q. How long was Seaver in that office at Fifth avenue? A. I don't know. He was there when I went with him.

Q. Did you pay any part of the rent? A. No.

Q. Seaver a stockholder in this thing? A. No.

Q. Stockholder in the Railroad and Steamboat? A. No.

Q. Now, where was this die plate? A. Reed & Barton's.

Q. And when did you get it? A. I don't know. You will have to find out from them.

Q. You remember pretty nearly? A. No, I haven't the slightest idea.

Q. Was it got in the spring of 1913 or '14? A. I must have got it before that letter was written.

Q. That would be perfectly obvious, you could not have written a letter on it until you got it? A. No, I couldn't.

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Q. Well, when did you get it, in the spring of 1914? A. I told you I couldn't tell you.

Q. Can you tell whether it was in the spring of 1913 or 1914 when you got it? A. I can tell you this much: I got it after May, 1914, because it was after May, 1914, that I went into those offices, so I probably got it between May, 1914, and that time, June 12th.

Q. You blossomed out in a brand new die at that time? A. I do occasionally.

Q. And this die was gotten contemporaneously with this paper; you bought it from the firm whose water mark is on the paper? A. I suppose it is.

Q. That is the one order or only order you ever made? A. No, I think I bought some more of the same paper later.

Q. And they used the same die on it? A. Yes.

Q. Can we get that stock book by applying to the secretary of the Railroad and Steamboat Company? A. I don't know as you can.

Q. Well, we have your consent to get it? A. Yes.

Q. You are what, president of the company? A. I am.

Q. And will you give us a sheet of your paper like this from the subsequent order, from the later order? A. If I have any left. You must remember I left those offices some months ago.

Q. Did you use up all of the first order that you made? A. Probably, when I put in a second order.

Q. Well, may we have a sheet of the paper of the second order? A. You may, if I have any. As I say, I left those offices some time ago.

Q. Have you got your fountain pen with you? A. Yes. But you can see by this fountain pen I did not have it at that time.

Q. Will you take this fountain pen and make a duplicate of that paper? A. Do you want it made with this pen? You want me to make it?

Chairman Thompson.— Yes, make a complete copy.

Mr. Wood.— I communicated with Mr. Banks, Mr. Chairman, and he is here now.

Chairman Thompson.— All right.

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WILLIAM C. BANKS, sworn as a witness, testified as follows:

Examination by Mr. Smith:

Q. And your business? A. Electric engineer.

Q. Where is your office? A. 30 Church street, Hudson Terminal building.

Q. How long has it been there? A. I should judge about five years.

Q. Where before that? A. Beford Park, Bronx.

Q. Do you know Robert C. Wood, Public Service Commissioner? A. I do.

Q. How long have you known him? A. I should say about sixteen years.

Q. Have you ever been associated with him in business during that time? A. Except the time I went with the Northwestern Construction Company with some patents. Electrical patents.

Q. And when was that? A. About five years ago.

Q. You had some negotiations with the company about the sale of a patent at that time? A. I went with them. I went to work for them practically.

Q. And continued with them for how long a period? A. Well, until the time that the company sold over to me, the Northwestern Construction Company and I formed a new company.

Q. You formed a new company? A. Yes.

Q. And how many shares of stock are there in that Northwestern, or were there? A. Forty shares, I believe.

Q. Forty shares? A. Forty shares.

Q. And how many of them did you have while you were operating with the company? A. None.

Q. You are not a stockholder? A. No, sir.

Q. And did you get the control of the company by a purchase of stock at one time or at different times? A. At one time.

Q. From what person or persons did you make the purchase? A. Mr. Wood's brother, P. Erskine Wood.

Q. How long had you been negotiating with him before you made the purchase? A. I should say probably a week or ten days or two weeks.

Q. And did you have any negotiations with Robert C. Wood? A. No, sir.

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Q. How many talks did you have with Robert Wood's brother? A. Oh, probably half a dozen.

Q. And who was the person that initiated the discussion, yourself or the brother? A. As to the sale?

Q. As to the transfer by the company? A. Why, both of us, I believe.

Q. Well, somebody must have started it. A. Well, I guess Mr. P. Erskine Wood had no use for the concern. He did not know what to do with it.

Q. Where did he get it? A. I guess he got it from his brother, bought it from his brother.

Q. And it was after the purchase from his brother that he commenced to talk with you? A. Yes, sir.

Q. And what is his line of business? A. Why, he is with Colgate, Parker & Company, I believe, the banking house.

Examination by Chairman Thompson:

Q. Have you got the certificates with you? A. No, sir.

Q. Where are they? A. At my office.

Q. Can you get them quickly? A. Yes.

Q. How long will it take you? A. The office closes at 12 o'clock.

Q. Can't you get in your own office? A. Yes. I can't get in the safe. I will try and see if I can get in the office. I have got checks showing payment to the concern.

Q. You haven't a time lock on it? A. No, sir; no use for those things.

Chairman Thompson.— I will make this statement: That in relation to an investigation made by Mr. Perley Morse, our official accountant, of the books of the New York Produce Exchange Bank, Mr. Morse makes this report, which may go in evidence.

(Offered in evidence and received.)

PERLEY MORSE on the stand.

Chairman Thompson.— That is a report which you have made and signed to this Committee, which shows the facts as you found

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them from an examination of the books of the Produce Exchange Bank?

Mr. Morse.— Yes, sir.

WILLIAM C. BANKS on the stand.

A. That covers the entire transaction. You will notice that stock is in the name of H. R. West, 37 shares. That is my brother-in-law.

Examination by Chairman Thompson:

Q. Can you get the certificates which were surrendered at the time this certificate was issued to P. Erskine Wood? A. I couldn't tell you where they are. I know that covered the transaction at the time.

Q. But there must have been a certificate that Mr. R. C. Wood surrendered? A. I suppose I have got that somewhere. It will take me some time to look for that. It must be with the papers, there with the papers; there is a bunch there in the safe.

Q. Will you see if you can get that? A. It will take me some time to do it now. It will be here Monday morning.

Q. We have so much to do on Monday I would like to have you. I hate awfully to annoy you with this thing, but it is more important to Mr. Wood than it is to me or to you. I would like all the certificates surrendered by Mr. Robert C. Wood to you.

(Recess.)

AFTER RECESS

WILLIAM C. BANKS on the stand.

I am sorry to keep you people waiting. That is the entire stock certificates, all the certificates I see over there on the books.

Chairman Thompson.— Four of them?

Mr. Banks.— I guess that covers them all.

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Chairman Thompson.— One hundred and sixty shares all there is?

Mr. Banks.— No. Forty shares is all the stock. A thousand dollars. Forty shares at twenty-five dollars par value.

By Mr. Smith:

I offer in evidence certificates No. 16, No. 17, No. 20, No. 21, 22, 23, 24, 25, 26, 27, 28, 29 of the Northwestern Construction Company, a company incorporated under the laws of the State of New York, with a capital stock of one thousand dollars.

(Received.)

Chairman Thompson.— You will leave those certificates with us, Mr. Banks?

Mr. Banks.— Yes.

Chairman Thompson.— May we have your presence next week if we telephone your office?

Mr. Banks.— Yes, certainly. Give me a day's notice. I am away quite a bit. I do not stay in town.

Q. Have those certificates been under the control or in the possession of anybody else within the last year since you acquired the control of the company? A. No. I haven't seen them since they were turned over to me. They were in the safe practically with some other books. I think those certificates were in the safe. I found these in the desk.

Chairman Thompson.— Have you seen Mr. Wood in relation to those matters within the last three weeks?

Mr. Banks.— No, sir, I have not.

Chairman Thompson.— Anybody? Or talked with them?

Mr. Banks.— I had been up at Columbia for the last three weeks.

Chairman Thompson.— Has he access to the safe up there?

Mr. Banks.— No, sir.

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Chairman Thompson.— Or his brother?

Mr. Banks.— No, sir.

Chairman Thompson.— You are sure he has not had, or any of his assistants these stock certificates?

Mr. Banks.— Absolutely.

ROBERT C. WOOD on the stand.

Examination by Chairman Thompson:

Q. As a matter of fact, you took your office on the 24th of May, 1914? A. No, sir; I think about the 1st of June.

Q. I don't want to know what you think, I want to know the fact. Isn't it a fact you received pay as a Public Service Commissioner from the 24th of May, 1914? A. As I remember it —

Q. I don't want to know what you remember; I want to know the fact. A. I will have to look it up.

Q. I wish you would go to the telephone and look it up at once. A. The secretary is out, but to the best of my recollection it was the 29th I was sworn in.

Q. Whom did you succeed? A. John E. Eustis.

Q. I don't want the best of your recollection — that is perfectly susceptible of proof. A. Well, I will prove that by Monday.

Q. Very well. My understanding is that Mr. Eustis' recollection of his pay check is that it stopped on the 24th. I am very much convinced that he would have a good recollection on that. A. Well, that is a matter of record. I will find out.

Q. Have you got a stenographer? A. I have, yes.

Q. Who is it, man or woman? A. A man. He is very sick; he has got tuberculosis.

Q. Where is he? A. Up in the Adirondacks.

Q. How long has be been up there? A. About six months.

Q. Is he drawing pay? A. Fifteen hundred dollars a year.

Q. You haven't had any service from him in six months? A. No, the poor fellow is dying; very ill. I will say that my secretary got a letter from him the other day — one of the saddest things I ever read.

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Q. You have got along all right without any stenographer since he has been up there? A. No, I get one.

Q. Who do you get? A. I send around to the secretary's office and get one.

Q. You take one of the secretary's office? A. One of the general stenographers.

Q. He has one there? A. One of the general stenographers.

Q. They haven't any new stenographers in the secretary's office on this account? A. Not as far as I know.

Q. So there are plenty of stenographers there to use when your stenographer is away? A. I have always got one.

Q. You get along all right? A. I get one when I need one.

Q. It is not a real necessity to have a stenographer for each Public Service Commissioner? A. I certainly think it is.

Q. You don't need yours. You get along without? A. I get along without.

Q. You work as hard as anybody else over there? A. I try to.

Q. You are there every day? A. I certainly am.

Examination by Mr. Smith:

Q. Commissioner, whose signature is that to that certificate? A. That is mine.

Chairman Thompson.— Exhibit certificate No. 22.

Mr. Wood.— That is mine.

Q. And it is signed on what day? A. It is dated the 25th of May, 1914.

Q. Issuing to yourself how many shares of stock? A. This is to certify that Robert C. Wood is the owner of 37 shares; why, it calls for 37 shares.

Q. And is endorsed in blank? A. Yes.

Q. And what is the writing in the corner? A. Lewis Cass Ledyard, Jr.

Q. What is the date of that certificate? A. 25th of May, 1914.

Q. Exhibit stock certificate No. 23? A. Yes, No. 23.

Q. That certificate was issued for No. 22, was it not? A. I presume it was.

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Q. Well, look at it and see. A. Well, it is numbered consecutively.

Q. And it is signed by what person — president? A. P. Erskine Wood, president.

Q. And that on its face made a transfer in the presidency of the Northwestern Construction Company on that day, didn't it? A. Yes, sir.

Q. Did you attend the meeting? A. I think I did. The minutes would show.

Q. Well, don't you know something about something without some minutes? A. Well, I am testifying here under oath. I think, as I said — if you want me to make correct statements — I think I did attend it.

Q. Don't you know? A. I am quite certain I did.

Q. What happened at the meeting at which you attended? A. I resigned and my brother was elected president of the company.

Q. What happened at the meeting? A. I resigned and my brother was elected president.

Q. You first issued to yourself 37 shares of stock in place of the old certificate, didn't you? A. Apparently I did, from this, yes, but I would like to present the minutes of this meeting. I can get those.

Chairman Thompson.— All right, go and get them. I will wait for you.

Mr. Wood.—I think Mr. Ledyard has them or Mr. Banks has them.

Chairman Thompson.— What has Mr. Ledyard to do with them?

Mr. Wood.— He is the attorney. I will answer to the best of my recollection.

Q. Then, after issuing the new certificate to yourself, did you call the meeting to order? A. I probably did. I followed the usual course. All I remember of that meeting is I resigned the presidency of it and my brother was elected president.

Q. And then there was on the same date and by certificate Exhibit No. 23 the same number of shares were issued to your brother? A. That is what certificate No. 23 says.

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Q. I don't care about that. Is that the fact? A. I would like to present the minutes of those meetings.

Q. I would like your recollection first, and then we will get the minutes and verify it. A. My recollection is that was done.

Q. Did you put that stamp on that certificate? A. I don't remember whether I did or not.

Q. What is your recollection of it? A. I don't remember.

Q. Is that your handwriting "Canceled" across that stamp? A. Looks like Mr. Ledyard's handwriting; might have been mine. I can't tell now.

Q. What is your method of canceling stamps on stock certificates? A. Running a pen up and down.

Q. Ever canceled them with lead pencil? A. I don't remember that I have.

Chairman Thompson.— You don't mark the date on them?

Mr. Wood.— I don't think there is any hard and fast rule for doing it.

Chairman Thompson.— It is a good deal safer.

Q. So that if the record is correct, that you took your oath of office and commenced to act as Public Service Commissioner on the 24th of May, 1914, you were a Public Service Commissioner acting as president of the Northwestern Construction Company subsequent? A. If that was the case, yes. But I am quite certain it is not the case. Because I swore in the day before Decoration Day, I am quite positive, as I told the Chairman.

Chairman Thompson.— I was wondering what you thought about that mucilage, whether it was green or dry?

Mr. Wood.— It is a very damp day. Little moisture in the air.

Chairman Thompson.— The mucilage is spattered all over the certificate No. 25, and it appears to be rather green, but you say it is on account of the damp weather.

Mr. Wood.— It may be on account of age, too.

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Chairman Thompson.— Well, of course, it is either age or lack of age. You can put it on the record that the day is damp and that might have done it.

Mr. Smith.— This is certificate No. 25 of date of January 2nd, 1914.

Chairman Thompson.— I just want to know if there is any other stock or bonds or certificates on companies that you transferred to your brother in May, 1914, or since?

Mr. Wood.— No.

Chairman Thompson.— Or before?

Mr. Wood.— No.

Chairman Thompson.— There is no such transfers of any kind in any company?

Mr. Wood.— No.

Chairman Thompson.— If you have any statement you desire to put on the record, I would be glad to have you do it.

Mr. Wood.— I will take the liberty of doing that on Monday.

MR. WATERBURY on the stand.

Examination by Mr. Smith:

Q. You have turned over to me, and this is the agreement called for yesterday? A. Yes. I passed it over to you.

Mr. Smith.— I desire to read into the record portions of an agreement called for by the Committee and which Mr. Waterbury has delivered at this time, as follows:

> " Agreement made the 30th day of January, 1915, between American Sanitary Supply Company, a corporation organized and existing under the laws of the State of New York, having its principal office in the City of New York, hereinafter called ' The Company,' party of the first part, and Nelson J. Waterbury, of the said City of New York, hereinafter called ' licensee,' party of the second part. Whereas the company is the owner of letters patent of the United

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States, numbered and designated as follows: No. 952,537, dated March 22, 1910, to Bernard Lovett for improvement in coin control mechanism for vending machines; No. 987,634, dated March 21, 1911, to Bernard Lovett for improvement in vending machines; No. 952,536, dated March 22, 1910, to Bernard Lovett, for improvement in vending machines; and whereas the company has agreed to grant to the licensee the exclusive right to the use of said invention for marketing towels and soap in the United States and Dominion of Canada; now therefore this agreement witnesseth that the parties hereto in consideration of the agreements and undertakings hereinafter more fully expressed, have agreed and hereby agree as follows: First, the company hereby gives and grants unto the licensee the sole and exclusive license and right to use the above-mentioned patents, and any and all improvements thereon which the company now owns and controls, and also any and all patents and improvements which the company may hereafter acquire for the life of the same for or relating to vending machines to be used for the sale of towels and soap in the United States and Canada, and then — In witness whereof the parties hereto, said American Sanitary Supply Company, party of the first part, has caused its corporate name to be signed hereto by its president, and its corporate seal to be affixed, and attested by its secretary, and the said Nelson J. Waterbury, party of the second part, has signed his name and affixed his seal thereto, the day and year first above written.

" American Sanitary Supply Company (Seal)

" by John A. Mahar, President.

" Nelson J. Waterbury."

A. Did I put a seal on?

Q. No.

Mr. Smith.— And acknowledged before Nathaniel Hahna, and is dated the 30th day of January, 1915.

The balance of the instrument is not read into the record because they are simply operating provisions of the agreement, and of no interest to the Committee in this proceeding.

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Q. Now, Mr. Waterbury, under the terms and provisions of that license, what do you say as to its present or immediately future value to the American Sanitary Supply Company? A. Its present value is very small, but I should say that with any reasonable success, that in the course of the next two years the royalties possible under that agreement ought to run somewhere between seventy-five hundred and fifteen thousand dollars a year.

Chairman Thompson.— That is provided you can make some sales to some railroad?

Mr. Waterbury.— I say if the thing is a success. Mr. Chairman, I would like to make a statement here if I might, in reference to my testimony.

Chairman Thompson.— Any statement you like.

Mr. Waterbury.— I came down here very unexpectedly yesterday, and I was a little mixed on dates, and I want to put myself right. First you say this agreement is dated January, 1915. This short agreement which I had, which was for six months, was dated early in 1914. I said 1913 yesterday, and that agreement ran for six months, until July. We did not do anything about it. I went ahead as if it was extended, and we put it finally in concrete form in this way.

I would also like to make a statement in defense of myself, that the American Sanitary Supply Company has no connection in any way, form, shape or manner, with this business, except under that royalty agreement. They have no office with us. When this business was taken over from them, we went into the offices where they were, and we simply never had the names removed from the windows, and they have never — all of the rent that has been paid up to date has been paid by us. They have never had any office there. For a little while Mr. Mahar kept a personal office there, and he retired from the business.

Chairman Thompson.— They are friendly with you?

Mr. Waterbury.— I pay them money.

Chairman Thompson.— The more successful you are, the more successful they are.

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Mr. Waterbury.— They ought to be friendly.

Examination by Chairman Thompson:

Q. Will you have some one up in your office bring down to us, I don't care who it is, some clerk or anybody, bring us down the stock book of the American Sanitary Supply Company? A. Mr. Mahar will have to go up there and open the safe.

Q. You can't get into the safe? A. That is one of the things he did when we took over the things, we took over the safe, and never have been able to get into that.

Q. The stock books are in that safe? A. If it is at all material. It is important that you have the books, is it?

Q. Just the stock book showing the accounts of the stockholders. I don't know how important a thing it is. A. I know pretty well who the stockholders of the company are myself.

Q. He says there are forty-five of them. A. I guess so. I only know a few of the leading. His father and himself and Robert Wood used to be.

Q. And who was the other three or four principal fellows? A. I think McMann.

Q. Who is McMann? A. The one that was secretary of the company. Bernard Lovett who invented those inventions. T. N. Brundage, who was for a while, when they were in business, secretary of the company. I only know those men, but he has got a lot of the real men, I am very sure.

Q. The real investors? A. No, the real people who were interested in trying to build up the business.

(Recess until 3 P. M.)

AFTER RECESS

The Chairman.— The Committee will come to order.

MR. DUANE on the stand.

Examination by Mr. Smith:

Q. I understand, Mr. Duane, you are here in obedience to our subpoena? A. Yes, sir.

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Q. And for what particular purpose at this time, to comply with its terms in full? A. I would like to read a statement to you.

Chairman Thompson.— All right.

Mr. Duane:

"Under advice of counsel I have declined to produce the Depositors' Ledger of the Bankers' Trust Company from 1906 to the present date, containing the account of Edward E. McCall and E. E. McCall, because the subpoena duces tecum directs generally the production of the entire deposit account from 1906 to date, and there is included in said account many hundreds of items of deposits and withdrawals made by the depositor with the Bankers' Trust Company, and which transactions established a confidential relation between the depositor and the institution, and the institution cannot disclose the items appearing in such account to the public, or to this Committee. The account is a private bank account of a citizen of this State, covering a long period of years.

"I further state that no showing has been made of any proper case for the production of the books mentioned, or that any of the items included therein are legal or pertinent to any inquiry now pending before this Committee, or that the production of any of the said items is necessary, or that a proper case exists therefor. The Bankers' Trust Company has permitted accountants, designated by this Committee, to examine at length all of its books and records relating to any matter or thing which the accountants desired information about, except as to the books now referred to, and as to those books, upon the grounds above stated, the witness cannot produce them.

"I, nor the institution of which I am an officer, have no desire or purpose to delay, impede or interfere with the action of this Committee, but, in view of the advice of counsel, I think it would be a positive breach of duty for us to disclose the said account, and therefore cannot act otherwise."

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Chairman Thompson.— Is there any possible way to produce these items that we have demanded without producing the others — they are all in the same book?

Mr. Duane.— They would be scattered over a period of years.

Chairman Thompson.— I understand, but it is all the same account.

Mr. Duane.— It is all the same account.

Chairman Thompson.— So we could not subpoena the items, without getting the items that you claim are objectionable. That is the truth?

Mr. Duane.— Yes.

Chairman Thompson.— You may issue a subpoena for Judge McCall, returnable at 5 o'clock, and also Ella Gaynor McCall. I want to make this statement. I hoped that you people would not put this Committee in that position, and I am only subpoenaing Judge McCall and Ella Gaynor McCall because of this action on the part of the Bankers' Trust Company. You may go, excepting that we demand obedience to our subpoena, and will enforce it, but you know as well as this Committee knows that it will take two or three days to enforce obedience to its subpoena, and we have the right to think; that is the reason.

Mr. Hartfield.— That is not the fact.

Chairman Thompson.— That happens to be what will happen, that it will take two days' notice to you to produce these books through an order of the Supreme Court.

(Recess until 3 o'clock.)

The Chairman— The Committee will come to order. You may expunge from the record the remarks between Mr. Hartfield and myself. It may be expunged from the record entirely. Fairly friendly relations having been established during the recess, so that those remarks may be expunged, and you may leave them out of the record. Now the subpoena ordered before recess to Judge McCall and Mrs. McCall has not been issued, but a subpoena will be issued for Judge McCall, returnable Monday morning, at

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10 o'clock. I am asked to state on behalf of the Bankers' Trust Company that since the recess, they found the letter referring to Mr. Perkins and it has been delivered to Mr. Morse. I don't know of anything further to come before this Committee this afternoon, and so, unless the counsel has something — we will take an elastic recess.

AFTER RECESS

Chairman Thompson.— There isn't anything that you have to bring before the Committee, Mr. Busner?

Mr. Busner.— No, sir.

Chairman Thompson.— Then we will suspend until Monday morning at 10 o'clock.

The other statements that I made a few moments ago stand. I have nothing further to give out.

Whereupon, the Committee adjourned to November 29, 1915, at 10 o'clock A. M., at the same place.

NOVEMBER 29, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Committee met pursuant to adjournment at 10 o'clock A. M.

COMMISSIONER WOOD on the stand.

Mr. Wood.— May I make a statement? Mr. Chairman, when I transferred that stock and endorsed it to Mr. Mahar, I thought the stamps would be put on. Mr. Mahar told me he would put them on, and I thought they had been put on. The first time I saw that stock was on last Saturday morning, and that's the first time I knew that the stamps were not put on. And I endorsed that stock in good faith, and I thought everything had been attended to.

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Now, I would like to offer these transfer stamps now and put them on and cancel them. I have them right here.

Chairman Thompson.— Well, Mr. Wood, what is your explanation that you said it cost you two dollars for transfer stamps?

Mr. Wood.— Well, if it had been that par value, it would have been two dollars, and I had forgotten the par value.

Chairman Thompson.— Well, did you forget the par value, or difference between two dollars and eight dollars?

Mr. Wood.— Did I forget the par value?

Chairman Thompson.— Yes.

Mr. Wood.— I forgot the amount of the par value when I said that. I want it to go on the record I offered to put them on, and I offer these stamps as an exhibit to be canceled and to be added to the certificates.

Examination by Chairman Thompson:

Q. Then you acknowledge your duty to put these stamps on the exhibits and cancel them at that time? A. I acknowledge it was somebody's duty.

Q. And you have waited a year and a half before doing that? A. That shows for itself.

Q. I think you will have to take that up with the District Attorney and not us. A. I would like it to go on the record that I am offering these stamps. I just bought them, and just sent for them down to the Empire Trust Company, and I am now offering to put them on and am offering them as an exhibit in this case and will cancel them now if you will permit me.

Q. Now, you will have to take that up with the Attorney-General, and District Attorney possibly. I don't know. A. Then I understand you refuse to let me put these stamps on the stock.

Q. I don't know how your brain does operate. I can't tell what you understand. A. I am trying very hard to get you to understand, Senator. Pardon me just one moment. Then I offer these stamps in evidence, and to be marked as an exhibit.

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Chairman Thompson.— I decline.

Mr. Wood.— Well, I would like to show that there are eight dollars and a half's worth here. Will you look at those, Mr. Smith?

Mr. Smith.— We will assume you can count up to eight dollars and a half.

Mr. Wood.— I did not quite catch that.

Chairman Thompson.— Mr. Smith says he will assume you can count up to eight dollars and a half.

Mr. Wood.— I have not only counted up to it, but I have spent eight dollars and a half for them. Now, on Saturday you asked me to produce the evidence when I swore in. I found it was May 29th. The payroll shows that I received for May, $120.97; that Mr. Eustis received $504.03, which together makes $625, the monthly amount. And you also asked me to bring the minutes of the Northwestern Construction Company. Mr. Banks has just brought them over.

Examination by Mr. Smith:

Q. Commissioner, Mr. Mahar swore —

Chairman Thompson,— Maybe Mr. Wood has some other explanation.

Mr. Wood.— That is all the statement I care to make at the minute, but I might later on care to make a statement, Senator.

Q. Mr. Mahar swore that the exhibit which I show you, your so-called bill of sale for your Sanitary Supply stock — A. I hardly think you would call it a bill of sale.

Q. Well, you called it a bill of sale. I don't know. A. Well, you asked me to show some receipt or something to show the transaction had taken place.

Chairman Thompson.— It has never been called a receipt until now.

Mr. Wood.— Well, we will call it a *lapsus lingua.*

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Chairman Thompson.— Well, we will call it that from now on. I can't pronounce that.

Mr. Wood.— That is not obsolete. That is right up to date.

Q. That is what we thought. A. I meant the word, not the paper.

Q. Mr. Mahar swore that that was prepared and delivered to you within one week of its date. A. I heard him say that, yes, sir.

Q. Is that true? A. It is.

Q. Did you receive it within one week of June 12, 1914? A. My impression is I received it on June 12th.

Q. I am not asking for your impression. I am asking you to make a positive statement as to whether or not you received it within one week of June 12th, of 1914? A. I do make that statement.

Chairman Thompson.— You swear to that positively?

Mr. Wood.— I do, positively.

Q. I show you a certificate of stock in the Northwestern Construction Company. A. Yes.

Q. Where was that executed? A. Let me see, when is this? Date 25th of May? Why, my impression is, I forget now where the meeting was held, it might have been held at 43 Exchange place.

Q. I am asking you whereabouts it was held, not your impression. A. Well, I will have to look that up, Mr. Smith.

Q. Look it up in the minutes of the Northwestern Construction Company and see where it was held. A. Let me see — May 25th. "Minutes of the stockholders' meeting, Northwestern Construction Company, held at the office in the Borough of Manhattan, City of New York, on the 25th day of May, 1914, at three o'clock." Now, whether that was 43 Exchange place, or 30 Church, I can't tell. My impression is it is 43 Exchange place, although I am not positive.

Q. It was one or the other? A. I should say so.

Q. Well, do you say so? A. As far as I recollect, yes.

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Q. Well, have you no recollection? A. No, I haven't, not beyond what I said.

Q. No positive knowledge as to where that meeting was held? A. No positive recollection.

Q. Has it entirely passed from your mind, so that you cannot remember the circumstances of the transfer of your corporate stocks on the occasion of your becoming a Public Service Commissioner? A. Well, I was very busy about that time. I know we held a meeting at 43 Exchange place, and I think afterwards at 30 Church. I am not quite positive. It was either one or the other. I am positive of that.

Q. Who was present at the meeting? A. I don't remember. It is not stated here. I think my brother was there, and I think Mr. Lewis Cass Ledyard was there, the attorney.

Q. He was the attorney for the company? A. Yes, or, rather he was acting. Yes, he was the attorney for the company.

Q. Did Mr. Mahar have anything to do with that company in any way? A. No, sir.

Q. And it was not held at the office of the Seaver Company, by any possibility? A. No, sir; I am positive of that.

Chairman Thompson.— You can't tell where that was?

Mr. Wood.— I said, Senator, it was either 43 Exchange place, or 30 Church, to the best of my recollection.

Chairman Thompson.— 43 Exchange place. You mean at the office of Havemeyer & Wood?

Mr. Wood.— Well, there was no Havemeyer & Wood then. It was not Wood & Havemeyer; it was Wood.

Chairman Thompson.— That is, the office known as Wood & Havemeyer's office, what you meant by 43?

Mr. Wood.— Yes. My personal office, and Mr. Havemeyer's personal office, but not the firm office.

Chairman Thompson.— 30 Church, what was that?

Mr. Wood.— That was the Northwestern Construction Company office.

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Q. By the way, does your salary indicate that you drew ahead of the 29th of May? A. No, sir; started on the 29th.

Q. Started on the 29th? A. Yes.

Chairman Thompson.— Mr. Wood, what is the salary of a Public Service Commissioner?

Mr. Wood.— Fifteen thousand.

Chairman Thompson.— I mean per day.

Mr. Wood.— I think it is about $40.32 1/3. It was only $120.97.

Chairman Thompson.— That would be —

Mr. Wood.— $40.32 1/3 a day, if my calculations are correct.

Chairman Thompson.— Don't they pay for Sundays and holidays?

Mr. Wood.— I think they do. We very often work on Sundays and holidays.

Chairman Thompson.— You figure thirty days in a month?

Mr. Wood.— Yes, that is right.

WILLIAM C. BANKS recalled.

Examination by Mr. Smith:

Q. It has been testified here that P. Erskine Wood transferred to you the stock of the Northwestern Construction Company or the majority of the stock; that is correct? A. Well, I want to rectify the statement. There was only one share transferred to me. There was 36 shares transferred to H. P. West, and one share to Thomas J. Byrne, Jr., which would make it forty shares.

Q. And that transaction occurred where? A. At my office, 30 Church, when the papers were signed and the contract signed.

Q. How soon thereafter did you reorganize the company, or was it reorganized at that time? A. Directly after that transaction was closed, on June 15th, we reorganized — organized a new company called the N. W. Equipment Company.

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Q. Where were those instruments prepared? A. Why, I believe that the attorney of record, Mr. Lewis Cass Ledyard, prepared those instruments at possibly his office.

Q. Don't you know where they were prepared? A. I couldn't tell you, no.

Chairman Thompson.— Weren't you present when those were prepared?

Q. Just look them over. A. That one was prepared at the office, 30 Church.

Chairman Thompson.— What one is that?

Mr. Banks.— Certificate 28. Certificate 29 was prepared at 30 Church. Certificate 25 prepared at 30 Church. Certificate 26 prepared at 30 Church, and so was certificate No. 27.

Q. Signed there? A. Yes, sir.

Q. And stamped there? A. Yes, sir.

Q. Who put the stamps on there? A. I did.

Chairman Thompson.— That is at the office of the Construction Company, 30 Church?

Mr. Banks.— Yes, 30 Church.

Q. Was Mr. Ledyard present? A. No, sir. He was prior to the time those instruments were made up. He left shortly after that.

Q. And prior to their signing? A. They were signed by Mr. P. Erskine Wood when he transferred the stock.

Q. You said that Mr. Ledyard was there prior to the time? A. Yes. He left shortly after those instruments were placed in my hands.

Q. You mean he left before they were signed? A. I couldn't say whether he left before they were signed or not. He may have and may not.

Q. Mr. P. E. Wood was present? A. Yes, sir.

Q. And Mr. West? A. Yes, sir.

Q. And Mr. Hack? A. Mr. Hack and Mr. Byrne.

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Q. Was Mr. Mahar? A. No, I never knew Mr. Mahar at that time. I don't know which one you are referring to.

Q. Mr. John Mahar? A. I didn't know that gentleman at that time at all.

Q. You saw him here yesterday? A. Saw him here yesterday for the second time in my life.

Chairman Thompson.— Was he ever in your office?

Mr. Banks.— Not to my knowledge.

Q. And by no possibility had he anything to do with these certificates? A. No, absolutely none.

Q. Where did you get those stamps? A. They were purchased somewhere, I couldn't tell you.

Chairman Thompson.— Well, you got them and put them on.

Mr. Banks.— Purchased at some broker's office. There is one of them off. I couldn't tell you where the stamps were purchased.

Q. How many of these stock corporations are you connected with? A. About two, with that and the N. W. Equipment Company.

Q. And how long has the other one been in existence? A. Since June, 1914.

Q. And had you any occasion previously to purchase stamps of that character? A. No, sir.

Q. So that these were purchased for this special occasion? A. Yes, sir.

Q. And by you? A. Yes, sir.

Q. Where? A. I don't know where. Must have been some brokerage house on Wall street.

Chairman Thompson.— Well, now, that is an important question.

Mr. Banks.— I couldn't tell you, Senator, where I did buy them at that time.

Chairman Thompson.— This is the only purchase of stamps you made?

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Mr. Banks.— No, I made another purchase of stamps afterward, for the N. W. Equipment. I couldn't tell you.

Chairman Thompson.— That is an important question, and I don't like to have you treat it in this offhand way.

Mr. Banks.— I couldn't tell you. I don't remember where I did buy them.

Q. But in any event, you went to some broker's office and purchased those stamps? A. Yes.

Q. That is your cancellation? A. Yes, sir.

Q. Who put that stamp on, you or Mr. Wood? A. I put that on.

Q. When? A. About the same time or shortly afterwards.

Q. Well, when was that? A. I couldn't tell you offhand.

Q. In relation to this transaction, when did you put it on? A. They were all in my office, all those certificates were in my office.

Q. Where did you put it on? A. I couldn't tell you offhand. About the time the others were put on.

Chairman Thompson.— What do you mean by offhand? Is there any way you can get on hand and tell us?

Mr. Banks.— I couldn't tell you any better.

Chairman Thompson.— You mean you can't tell anyway?

Mr. Banks.— Why, no. A lot of things have occurred since then.

Q. When, in relation to this transaction, the same day? A. I presume so, yes, sir.

Q. Well, I don't want any presumption. When, as a matter of fact? A. It must have been about the same time, same day.

Q. It must have been about, but when was it done? A. I guess done at the same time; I guess done under the advice of counsel. He told me to put them on.

Q. Is it a fact you put them on at the time of the date of this transfer, or subsequent? A. No. It might have been a subsequent date.

Q. How far subsequent? A. Oh, a few days, probably.

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Chairman Thompson.— Don't make probabilities. Either answer the question or say you don't know.

Mr. Banks.— Well, I don't know, as a matter of fact, to be candid.

Q. Well, will you swear that those stamps were affixed to these instruments within one week of the transaction? A. Yes, sir.

Q. And more than fifteen months ago? A. Yes, sir, about that time.

Q. That is to exhibit certificates 27, 26, 25, 29, 28 and 21? A. Yes, I believe that is right.

Q. Have they been replaced, or has there been any necessity for affixing any of them since that date? A. I believe a few of them come loose. It must have been several months ago I looked that thing over, looking over some old records, and they were laying in the minute book beside that, and I replaced some of them.

Q. How many of them? A. I couldn't say; two or three of them.

Q. How long ago? A. That may have been two or three months ago.

Chairman Thompson.— I don't want it might have been.

Mr. Banks.— I couldn't say offhand.

Chairman Thompson.— You don't know?

Mr. Banks.— I don't know.

Q. How long ago was it, to your knowledge? How many months, assuredly? A. I don't know; I couldn't tell you that.

Q. At least three? A. Might have been four and might have been five; I don't know.

Q. At least three? A. Yes.

Q. At least three months ago? A. Yes. You will find some of those stamps are loose now. I noticed that the other day. They come very near coming off when I brought them over here.

Q. What was the occasion of your examining these certificates three months ago? A. I was looking for an old contract the Northwestern Construction Company had with a concern — I was

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trying to find a record of that contract, and in looking over the papers some of these stamps come off. By the way, that contract is lost. I haven't been able to find that until this day.

Q. Where were these — in the safe or in the desk? A. They were in the safe some of them, and some of them in the desk. There is one that is half off.

Q. Where were those, in the safe or in the desk? A. I believe these were in the safe, with the record book.

Q. Did you affix any one of these stamps on the morning that you brought them over? A. No, sir.

Q. And by any possibility could any other person have affixed any of them on that date? A. No, sir.

Examination by Chairman Thompson:

Q. Now, just a minute. When these stamps were affixed, who was present? A. No one that I know of.

Q. What? A. No one.

Q. What did you do, affix the stamps after the transaction arose? A. I guess that is permissible, isn't it?

Q. I ask you whether you did or not? A. No one was present.

Q. Then they were not affixed when this transaction was held? A. I did not say they were affixed when the transaction was had.

Q. Don't quarrel with me. I have kept pretty good temper here for several weeks, and I don't like to spoil it all now. Now, just tell whether, as a fact, they were put on at the time this transaction was made. A. Within a short time afterward. I don't say they were put on exactly at that time.

Q. Well, tell me whether they were or not. A. I don't think they were at that particular time.

Q. You know they were not? A. They were not on. They are on now.

Q. Were these stamps put on on the date of the transaction, at that time the transaction was had? Now, answer that question yes or no. A. I don't remember; I don't remember.

Q. Were they put on after the transaction? A. I don't remember.

Q. You don't remember whether they were or not? A. No, I do not, Senator; I couldn't tell you. That is two years hence.

Q. I don't believe you. A. Thank you.

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By Mr. Smith:

Q. Can you designate to us the broker's office where the purchase was made? A. No, I don't know. There was two or three brokers I was doing business with. I don't know. I might have bought them at a bank or trust company.

Q. You might have bought them a dozen places, but where did you buy them? A. I don't remember.

Senator Lawson.— You said earlier, in answer to Senator Thompson's question, that these stamps were put on afterwards, after the transaction?

Mr. Banks.— Yes.

Senator Lawson.— Now, in answer and in direct response as to whether they were put on at the time of the transaction, you say you don't remember?

Mr. Banks.— I don't remember that.

Mr. Lawson.— How did you come to remember that they were put on after the transaction?

Mr. Banks.— They could not be put on before the transaction very well.

Mr. Lawson.— I didn't ask you that. I say that you said they were put on after the transaction in answer to an earlier question. When he asked you a direct question as to whether they were put on at the time of the transaction, you say you don't remember?

Mr. Banks.— No, I don't remember that particular time. May have been the same day or next day. I may not have had the stamps that day.

Q. Do you recollect the circumstance of the purchase so you can testify they were perfectly new unused stamps? A. Oh, yes.

Q. Do you recall that? A. I don't know whether they were new or not.

Q. You remember the circumstance? A. No, I don't remember; honestly I don't. I don't remember that. I bought a lot of stamps at that particular time, and I don't remember just where I did get them.

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Q. What else did you buy stamps for? A. I don't know. I think I have some of them left yet, if the truth is known.

Q. Some of this same purchase? A. I don't know. I probably could find them if I looked for them.

Q. Will you bring those here to us? A. If I can find them. I don't know whether I have them or not.

Q. You bought a lot of them? A. I bought more than I needed.

Q. How many did you buy? A. All told, must have been three or four dollars' worth.

Q. And for what use? A. Why, to affix on old certificates, of course.

Q. And what else? A. Why, I guess that is about all, at that time.

Q. And at that time, had you any interest in any other company? A. No, sir; not that I required any stamps.

Q. And on the subsequent use, did you use this same class of stamps out of your desk? A. I believe I did, yes.

Q. No, did you? A. Yes.

Q. You did? A. Yes.

Q. And what was that company? A. That was the N. W. Equipment Company.

Q. And you have some stock certificates of that company? A. My brother-in-law. He controls the company as a matter of fact.

Q. And that has these same stamps? A. I believe some of the same stamps. I would not swear to it.

Q. Well, you know something about it, don't you? A. Why, sure.

Q. Well, what is the fact? A. Just as I stated.

Q. Well, you haven't stated anything. A. I can't give you any better answer than I have.

Q. What is the fact? Did you use stamps of the same purchase on the other company's stock that you used on this stock? A. I believe I did, some of them, yes. I won't say all. Some of them I believe I did.

Examination by Chairman Thompson:

Q. That N. W. Equipment Company any relation to this company? A. Absolutely none.

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Q. Who are the stockholders? A. H. R. West, P. J. Byrne, and W. C. Banks.

Q. Same stockholders as there are in this one? A. Yes.

Q. Who is H. R. West? A. Brother-in-law of mine.

Q. I notice that all the stock except two shares of this stock is in the name of H. R. West, or had been. A. I got financial assistance from. I run the concern and he owns it.

Q. So he owns thirty-eight out of forty shares? A. Yes, sir.

Q. And you only own one share in this company? A. Yes, sir.

Q. And Byrne owns the other share? A. Yes, sir.

Examination by Mr. Smith:

Q. I would like definitely, Mr. Banks, to understand if you will state it as the truth that at the time or shortly after the time of this transaction, you bought some two or three or four dollars' worth of stamps at a broker's office? A. Yes, sir.

Q. And having completed this transaction, you had the remainder of them in your desk or office? A. I don't know whether I have or not, but I did have.

Q. You had them? A. Yes.

Q. And subsequently requiring to use revenue stamps for another company which you have named, you used some of the same purchase in completing that transaction? A. Yes.

Q. That is true? A. I believe so, yes.

Q. No. A. Yes, I would say offhand, yes.

Q. I want you to think about it and tell me.

Chairman Thompson.— Don't give anything offhand unless you know. A. I don't remember, to be exact about it, Mr. Smith, to tell you the truth, but I think I did.

Q. Do you know anything about it now? A. No, very little, in this matter, Mr. Smith.

Chairman Thompson.— Well, then, your recollection ought to be much better than it is.

Mr. Banks.— My recollection in that case is just about as I explained it. I don't really recollect. I have had so much on my mind since that time. I have had all sorts of trouble on my mind.

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Q. So you won't identify the subsequent transaction by the use of these stamps? A. No, I will not.

Chairman Thompson.— What relation are you to Mr. Wood?

Mr. Banks.— None.

Chairman Thompson.— How long have you been employed by him?

Mr. Banks.— Why, up to the time that we took hold of the Northwestern Construction Company, probably two or three years.

Examination by Chairman Thompson:

Q. And what did you receive as compensation? A. Why, fifty dollars a week.

Q. Anything else? A. That is all.

Q. Any commissions? A. No, sir.

Q. Any interest in the company? A. No, sir; outside of the patent interest.

Q. Did you get any royalties on the patent? A. No, sir.

Q. Fifty dollars a week was all you received? A. That's all. No patent issued at that time. No royalties due.

Q. If the royalties came due, had you an interest in them? A. I would have, yes.

Q. Was Mr. Wood present when these stamps were affixed? A. No, sir.

Q. Neither Mr. Wood? A. No, sir.

Q. Now, you say you did put the same kind of stamps on the stock of this concern? A. I believe I did.

Q. Where is the stock of that other concern kept? A. The only shares I have got — it is all in my brother-in-law's, every share in his hands. This concern is practically extinct.

Q. Where? A. I don't know where he keeps it. Some safe deposit vault, I guess.

Q. Mr. H. R. West, where is his office? A. He has no office in New York. He is traveling.

Q. Where is he now? A. In Edinburgh, Scotland.

Q. Is there anybody in charge of his office? A. No, sir, he has no office.

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Q. Has he a house? A. No, sir. He has his sister's house, but I don't know where she lives.

Q. You don't know where she lives? A. No, sir.

Q. So there isn't any way you can tell us by which we can get the stock certificates in this other company? A. No, sir; I couldn't tell you.

Q. Your name is what? A. Mr. Banks.

Q. Now, Mr. Banks, this transaction, I am frank to say, looks at least peculiar in relation to these stamps. I do not want to allow any impression in relation to you to go abroad. I think it would be for your own personal advantage to procure these other stock certificates and show us those stamps on them the same as these you say exist. I think you ought to get them and get them before the Committee at once. A. I don't think I could get them to-day. I don't see how I could get them. No, sir, it would be a physical impossibility.

Q. How long has this brother-in-law been in Scotland? A. He will be back for the holidays.

Q. How long has he been? A. Two or three weeks, or about a month. I don't know. I haven't seen him in two months. I know he left and will be back before the holidays.

Q. Didn't Mr. Byrne retain his certificate of stock which he has in that other company? A. No, sir; that was assigned over to my brother-in-law.

Q. And that certificate he has got too? A. Yes, sir.

Q. Now, does he own these certificates or does he hold them for you? A. He owns them, sir.

Q. Both companies? A. Both companies.

Examination by Mr. Smith:

Q. As a matter of fact, you do not own this certificate in this? A. It don't amount to anything; ain't worth anything if I did. Here is the entire record of the meeting held at that time. If you care to go through and put these on the record, I would like to have it done.

Examination by Chairman Thompson:

Q. When were those made? A. Those records were made at the office of the company.

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Q. Do you keep books? A. What kind of books?

Q. Books of account, showing your financial transactions? A. As to the sale of that company?

Q. As to any financial transaction which you make? A. Why, I suppose same as my company does.

Q. Now, is that offhand you are making that answer? A. No, sir.

Q. Where do you keep them? A. At the office of the company.

Q. And if you purchased any stamps, you would have a record on that book, wouldn't you? A. No. That would be a petty cash item.

Q. It was paid out of petty cash? A. Yes, sir.

Q. Sure of that? A. Yes, sir.

Q. Kept no record of it at all? A. Petty cash item. I probably paid it out of my own pocket.

Q. You say you did not keep any record of this stamp transaction? A. I couldn't say. I don't remember that, Senator. Petty cash account might be forty or fifty dollars a week, and if we had to itemize all the small items, it would be some book.

Q. You ought to know whether you paid for the stamps out of your own pocket. A. I paid out of my —

Q. And didn't charge it to anybody? A. Nothing more than to go out and buy a cigar for a customer.

Q. You were at that time drawing fifty dollars a week? A. At that time I did not draw anything. My salary had expired at the time I negotiated —

Q. Why did you over-stamp some of these certificates? A. Over-stamp?

Q. Did you? A. I don't know whether they were over-stamped or not. We had a certain amount of stamps and simply used them.

Q. You say you went out and purchased them for this particular transaction? A. I was instructed by Mr. Ledyard to buy stamps for those certificates.

Q. And you went to the broker's office to get them? A. Yes, sir.

Q. And they had all kinds of denominations; you could get any kind or denomination you wanted to? A. I got some stamps. I got some ten-cent stamps.

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Q. You asked for ten-cent stamps? A. I don't know; I think so.

Q. Why did you — A. That is what they are marked.

Q. Why did you call — ask for ten-cent stamps? A. As a matter of fact, I don't know the difference.

Q. You don't? A. What the real required amount is. I am very ignorant in that respect.

Q. Why, if you did not know anything about the law, did you get any stamps at all? A. Mr. Ledyard the last thing he told me, "Don't forget to put stamps on these certificates"; that was his advice to me. "Don't fail to get the stamps and put them on those certificates," and I obeyed his instructions.

Senator Lawson.— How did you know how many stamps to put on?

Mr. Banks.— The Senator says I over-stamped them. I didn't know that.

Examination by Senator Thompson:

Q. I didn't say you over-stamped. I just asked you how you come to over-stamp them. You may not have over-stamped them. A. I beg your pardon. I am ignorant of the law on the stamp question.

Q. You went to a broker's office where you could get any kind of stamps you wanted? A. Anything to fill the bill.

Q. I say they had them there if you wanted to buy? A. Maybe he didn't have the particular denomination.

Q. Just remember about that. Did he have the particular denomination, or didn't he? A. I don't remember.

Q. You went and purchased them? A. Yes.

Q. You did not send out any clerk? A. No, sir.

Q. You inquired where you could buy revenue stamps and went and bought them? A. Yes, sir.

Q. At a general broker's office where they had them for sale? A. Some broker's office.

Q. Where they had them on sale? A. Yes.

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Examination by Mr. Smith:

Q. You have already stated that those were prepared in your office and signed in your office? A. I don't know what you are handing me now, Counsel.

Q. Those present certificates? A. Second day of June, second day of June, second day of June; yes, sir; those were prepared, signed, sealed and delivered in our office with a seal.

Q. And you had your meeting there? A. Yes, sir.

Q. Do you run a typewriter? A. I did not, no.

Q. Did anybody run one? A. I don't know.

Q. Well, I don't; I am asking you did there anyone run a typewriter on the occasion of that meeting? A. I guess our stenographer did, yes.

Chairman Thompson.— Don't guess about it.

Mr. Banks.— I am sure she run a typewriter that day.

Q. Did she run a typewriter for the purposes of this meeting? A. I presume she did.

Q. I can't assume she did. Tell us whether she did? A. Yes.

Q. And took the minutes of the meeting on the machine? A. She was a — she was inspector of elections.

Chairman Thompson.— Just answer the question of counsel.

A. Yes, she did.

Q. Run the machine while the meeting was in progress? A. I don't know whether she run the machine while the meeting was there; she run it in the other room, probably.

Q. That is quite important. A. I don't know that it was written right in that office. I think the whole thing —

Q. That day? A. Yes, that day, June 2d.

Q. And were the minutes prepared on the machine as they occurred, or did she use a pencil and pad? A. I believe it was taken in shorthand.

Q. It was taken in shorthand? A. Yes, but they were written in the office.

Chairman Thompson.— Written all that day?

Mr. Banks.— Yes, all that day.

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Chairman Thompson.— All these certificates, stock certificates?

Mr. Banks.— I don't know. Maybe they were prepared in the other office, but I believe they were prepared in that office.

Q. Well, where were they prepared? Were any of them prepared in the attorney's office and returned to you? A. I don't know.

P. ERSKINE WOOD, sworn as a witness, testified as follows:

Examination by Mr. Smith:

Q. Mr. Wood, I call your attention to a typewritten minute of the meeting of the Northwestern Construction Company, held on the second day of June, 1914, at 11:30 o'clock, and ask you if that is your signature? A. It is.

Q. Where did you sign it? A. I signed it at the office of the company.

Q. On what date? A. June 2d.

Chairman Thompson.— What year?

Mr. Wood.— 1914.

Q. I call your attention to stock certificate of the Northwestern Construction Company No. 25, and ask you if that is your signature? A. Yes, sir.

Q. Where did you sign that? A. I imagine I signed that the same day.

Q. I don't know. A. Second day of June, 1914.

Q. Did you sign it that day? A. Yes, sir.

Q. Were you a party to the preparation of certificates 25, 26, 27, 28, 29 of the Northwestern Construction Company? A. Yes, I was a party to all those that I signed.

Q. And tell us the circumstances of that transaction. A. Why, I took the company over.

Judge McCall.— Senator, may I interrupt a moment? I have just come now from my work on my brief, and I need every moment that I have to finish it, so if you will do me the courtesy —

Chairman Thompson.— Stand aside, Mr. Wood.

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EDWARD E. MCCALL on the stand.

Examination by Mr. Smith:

Q. Judge, the Committee has issued a subpoena to the Bankers Trust Company for the production of your account with that concern. The officers of the company have refused to produce certain items of that account, and inform the Committee that they do so under your instruction or from the fact that you are a depositor and they are obliged to give you the protection of secrecy. Have you any objection to the production of that account before this Committee in its entirety? A. I have.

Q. What and why? A. I will refuse my permission to lay before this Committee any more of my affairs that do not bear upon the question upon which their investigation is based. They have abused the privilege that I have given them, and I do not propose to be subjected to any further abuse at their hands, if it is dependent upon my consent.

Chairman Thompson.— Judge, the books of account and correspondence in the Bankers Trust Company was subpoenaed last Monday or Tuesday, and our representative, Mr. Perley Morse, went to the bank and was given access to the earlier portions of the account. Certain records there were laid before him, and he had access to them on Tuesday and on Wednesday. Friday morning the Trust Company refused Mr. Morse access to the ledger accounts and to the check stubs or cancelled checks that accompanied that ledger deposit account. Now, this Committee has information that this 387 shares of stock in the Kings County Lighting Company, which has been before this Committee, has been used and hypothecated. Now, this Committee desires an inspection of your account in this deposit ledger, and these cancelled checks, only from January 1, 1913, down to this date, and the Bankers Trust Company refuses this Committee access without your consent.

Mr. McCall.— Well, that is a different proposition. That was not the proposition that was put up to me at all by your counsel. I will take that under consideration. I don't know but what that might be perfectly fair.

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Chairman Thompson.— In fifteen minutes?

Mr. McCall.— I will have to have more time than that.

Chairman Thompson.— Half an hour.

Mr. McCall.— Can't you give me until to-morrow morning?

Chairman Thompson.— We cannot.

Mr. McCall.— You will have to.

Chairman Thompson.— We would like it to-day.

Mr. McCall.— Your information about the hypothecation you will find is absolutely untrue.

Chairman Thompson.— What is that?

Mr. McCall.— You will find it is absolutely untrue.

Chairman Thompson.— Of course it would be better for you and for us both if we were given an inspection of this account from January 1st down to date.

Mr. McCall.— I am going to take into consideration whether I will do that. You have transplanted me before another tribunal with other charges, and I think I should be left to appear before that tribunal and take into consideration the fact revealing it there.

Chairman Thompson.— Judge McCall, we are not trying you.

Mr. McCall.— Oh, well, now, that's all right.

Chairman Thompson.— Just a minute until my position is made clear. I may be absolutely wrong, I don't know. We are not trying you. I don't believe the Governor has got you on trial. You are a public officer, and you are a servant of the State, and in a high position, owing more than ordinary duty to the State, and under these conditions it is different than if you were on trial; it is not a question of you being entitled to the question of any personal privilege with the public office which you hold. Now, that is the aspect which I take of it, and it is only mine, and for that reason I believe so far as it might in any way show in relation to the public office, it is your duty to aid and assist the State through

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its Committee in every way possible. Now, that is my idea of it. I may be entirely wrong. Now the Committee would like to know within an hour, and I think that you could make up your mind within that time, as to whether we could have an inspection of that account we asked for, from January, '13, down to date.

Mr. McCall.— Well, I will take that under consideration. The only question, the only reason I don't say right now that you can have that is because I am going to determine whether you shall do it, because I have no confidence in your treating me fairly, and whether I shall take it before the Governor, and where I think it will at least receive judicial atmosphere. Now, that is the only reason that I do not say right now yes. I have no faith or confidence that you intend to treat me fairly or have any idea except to slur me, and I don't propose to allow you to do it. Now, that is the last time I am going to be called away from my work, because we might as well understand each other. I will not come again until the hearing is finished before the Governor.

Chairman Thompson.— I can't help what you do, and I am awfully sorry that my slant on this whole situation differs from yours.

Mr. McCall.— That's all right. You can have your "slant," as you call it, or anything else. I don't have the slightest regard for what your opinion is in the matter, good, bad or indifferent.

Chairman Thompson.— You are not alone in New York.

Mr. McCall.— No, you will find I am not before you are through.

Chairman Thompson.— I can't help that. Matters, after they get beyond this Committee, I am not responsible for. I am only responsible for what I do as Chairman of the Committee.

Mr. McCall.— You have assumed quite a responsibility, don't you make any mistake, by the way you conducted the affairs of this Commission.

Chairman Thompson.— I don't want a joint debate, and there is no question of defense, and there is no use of argument, and regardless of suggestions, investigation will continue.

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Mr. McCall.— I have not made any suggestion. Any suggestions will come from you.

Chairman Thompson.— Let us know in an hour.

Mr. McCall.— I will if I make up my mind to let you have the account, I will let you know in an hour. That is all to-day?

Chairman Thompson.— Yes.

P. ERSKINE WOOD on the stand.

Examination by Mr. Smith:

Q. Will you continue your history of the transaction whereby this Northwestern Construction Company was transferred? A. To me?

Q. Yes. A. Yes, sir. I made my brother a loan at a previous date, and he asked me to take this over off his hands, and handle the negotiations and sale for him, and receive compensation. The price I received for it in paying off the loan.

Q. And as a result of that you finally landed in this Church Street office? A. I did, sir.

Q. And what did you do that day, the 2nd of June? A. I resigned as president and got out of the company.

Q. Tell us what occurred, who was present? Go on and picture that transaction at that office. A. Mr. Banks was there. It was handled for me by Mr. Ledyard, L. C. Ledyard, Jr., and I remember a man called Hack there, and I think West was there, but I don't remember. He was a man didn't mean anything, a friend of Mr. Banks. My transactions and negotiations were with Mr. Banks. I did not know or care about the rest, and Mr. Ledyard handled the thing for me.

Q. Mr. Ledyard was there? A. Yes, he was there.

Q. And stayed throughout the entire transaction? A. Yes.

Q. Was there a clerk there? A. A clerk, no.

Q. Or a stenographer? A. I don't remember.

Q. Oh, well, you can remember that? A. I haven't the slighest recollection whether there was a stenographer there or not.

Q. Was there anybody running a typewriter? A. During the meeting?

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Q. Yes. A. No. I think I would remember it if there was, but I haven't the faintest recollection of the stenographer or typewriter. There might have been a stenographer, but I haven't any recollection.

Q. You signed some papers, of course, on that occasion? A. Yes.

Q. Do you remember that person being present? A. You mean May Van Allen Slink?

Q. Yes. A. Yes, I do now; you are right.

Q. What did she do? A. Stenographer there now, that I think of it, I think she was.

Q. Well, I don't know, and you do. A. I honestly don't remember. I remember a woman signing that. Well, I will say this: I remember she was there, but I don't remember whether she took down notes or not.

Q. Do you remember Fred Dussan? A. I remember Banks, and I remember West. Banks and West are the only men I recall. There were other men there, but their names did not mean anything to me, and I never thought of them again.

Q. Did you affix that stamp? A. I don't remember of affixing any stamp.

Q. Well, did you or didn't you? A. I did not affix any stamps.

Chairman Thompson.— Did you see any?

Mr. Wood.— No, not that I remember, no.

Q. Was there any delay in the meeting by reason of requiring stamps on the certificate? Did anybody go out and get any, to your knowledge? A. No.

Q. Did Mr. Banks go away from the meeting to get any stamps? A. I don't remember of his doing it.

Q. You would have remembered it if it had occurred, would you not? A. I think I probably would, yes.

Q. And it did not occur, did it? A. No. I wouldn't take my oath it did not occur, but I think I would have remembered it.

Q. Did you have any occasion to sign any papers in relation to that transaction other than on that date? A. No.

Q. All of your signatures — A. Let me see, now. At the first meeting of stockholders and directors' meeting, on May 25th, 26th

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or 27th — I then became a director and president, and I just took that week to negotiate with Banks and get out of the thing on June 2d — I got out. Now, what papers I signed between May 25th and June 2d I don't remember.

Q. You did not sign any after June 2d? A. No, I didn't, no.

Q. So that these typewritten minutes which are presented to you and contain your signature, were prepared on the 2d day of June? A. Yes, I signed them all there at that meeting.

Q. How long did the meeting take? A. Why, I should imagine an hour and a half or two hours, something like that. I should say in the neighborhood of an hour.

Q. Do you recognize those papers, the minutes of the meeting, typewritten minutes? A. Yes.

Q. And those were signed as well as the stock certificates within an hour of that meeting? A. To the best of my knowledge, they were, yes, sir.

Q. I call your attention to a letter addressed to Mr. Banks on June 2d. A. Yes, sir.

Mr. Smith.— I desire to offer the letter in evidence, and will read it into the record:

"CARTER, LEDYARD & MILBURN,
Counselors-at-Law,
54 Wall Street, New York.

(Containing the names of the firm, seven in number.)

"June 2d, 1914.

"WILLIAM C. BANKS, ESQ., *Care of the Northwestern Construction Company, 30 Church St., City.*

"DEAR SIR.— I enclose herewith original certificate and oath of the inspector of election who acted at the meeting this morning of stockholders of the Northwestern Construction Company. This instrument should be kept among your files.

"Very truly yours,
"LEWIS CASS LEDYARD, JR.

"Enclosure.
"L. C. L., JR."

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Q. Does that refresh your recollection as to whether or not those instruments were prepared at that or a subsequent time? A. You mean subsequent to June 2d?

Q. Yes. A. Well, the instruments here, they were all prepared and signed June 2d.

Q. Did it require more than one meeting? A. No, we only had one meeting.

Q. Do you know Mr. John Mahar? A. No.

Q. Ever see him? A. No.

Q. Ever have any business with the Seaver Construction Company or Mr. Seaver, whom he mentioned here the other day? A. I don't remember him.

Q. Seaver? A. Seaver Construction Company, I never had any business with him.

Q. By any possibility, did these instruments come to any other office than the office of the Northwestern Construction Company during their preparation— they did not pass out of that office until they were finished? A. No, they were there.

Chairman Thompson.— Do you remember signing these papers?

Mr. Wood.— Yes, sir.

Chairman Thompson.— Remembering the time distinctly?

Mr. Wood.— Yes, distinctly.

Chairman Thompson.— What kind of a pen did you sign them with?

Mr. Wood.— God knows; I don't. Probably a stub.

Chairman Thompson.— Was it a fountain pen?

Mr. Wood.— I don't know.

Chairman Thompson.— Have you any recollection?

Mr. Wood.— Not the slightest.

Chairman Thompson.— Was the ink there on the table where you were?

Mr. Wood.— I haven't got any idea what sort of pen I used.

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Chairman Thompson.— You don't know?

Q. By the way, Commissioner Wood, your brother, was not there? A. No.

Q. So that you did not use his pen or his bottle of ink? A. No. I don't know whether I used a bottle of ink. It may have been ink he had there several years for all I know.

Q. But in any event, was it Commissioner Wood's?

Senator Foley.— That is a joke.

Chairman Thompson.— It is not any joke. Senator Foley doesn't understand, but it is not any joke.

Senator Foley.— I thought it was a joke, and you were trying to be humorous.

Chairman Thompson.— It is not any joke, and I am sorry I have to explain every time I joke. Some one here from the Public Service?

Mr. Walker.— Yes.

Chairman Thompson.— Will you produce for this Committee the records in relation to the purchase of the signal system of the new subways?

Mr. Walker.— For the B. R. T.?

Chairman Thompson.— In relation to the bid of the Pittsburgh Company and the bid of the Rochester General Company.

Mr. Walker.— Do you want that right away?

Chairman Thompson.— Yes. Commissioner Wood, you may be excused, so far as your appearance is concerned until you are notified. I am informed by the secretary of the Governor that I have a telegram addressed at the Biltmore, stating that at the written request of Judge McCall, without stating any reason, Judge McCall made a written request to the Governor asking that the hearing of charges be postponed until Friday, and no reason was stated, and that the Governor accordingly has adjourned the hearing of the charges until Friday at 12 o'clock noon, at the executive chamber. Therefore, this Committee will take a recess

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until 2:30 P. M. I simply say this, gentlemen, that Senator Lewis came from Rochester last night to Albany this morning, intending to perfect his argument there to-day, and be ready for the hearing to-morrow, and is in Albany now, and the matters before the Committee are such that I do not care to announce the policy of the Committee until I have had an opportunity to consult with Senator Lewis about it, and he will be here to-night on the 7 o'clock train.

(Recess until 2:30 P. M.)

AFTER RECESS

Chairman Thompson.— The Committee will come to order.

Mr. Smith.— Mr. Chairman, Mr. Mahar, a witness before the Committee at a former session, desires to go upon the stand and make some statement of correction, I don't know just what it is. He is here.

JOHN A. MAHAR on the stand.

Mr. Mahar.— Well, gentlemen, I requested to be heard here this afternoon, and the Chairman has granted my request. It is in reference to an article which appeared in the early edition of the Evening World. It is evidently quoting Senator Robert R. Lawson, one of the Brooklyn Senators, and a member of this Committee. In part it states that certain other circumstances that should be explained in connection with this receipt have also developed. An expert who examined the water mark on the paper succeeded in identifying it as a paper handled by the Reed & Barton Company, a Fifth avenue concern, and upon investigation learned that this company have received an order from Mahar for 300 sheets of this paper, which is known as Newport note paper, on September 15, 1914, and that the same was delivered on October 20, 1914, to Mr. Mahar. Investigation of the concern's books from 1913 on show no other order delivered to Mr. Mahar during that time. The paper had on it Mr. Mahar's name. Now, I have here a book from Reed & Barton, and on this page, dated May 8,

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1914, they have my order. This book was shown to your representative by the representative of Reed & Barton, and it was suggested by Reed & Barton's man that this page be marked for identification. He evidently neglected to do that. He was given at the same time this slip on which no other name appears but mine, showing that the die was made and the paper delivered to me on June 12, 1914.

Chairman Thompson.— You are stating now what Reed & Barton did when you were not there.

Mr. Mahar.— This is their regular slip taken from their files, and that is the only record that any business concern would have.

Chairman Thompson.— It would be a good deal better evidence to let them testify to it. I will tell you what our representative did. Went to Reed & Barton on the evening of the day, or on the afternoon of the day that this letter, signed by you, dated June 12th, was produced before this Committee, and Reed & Barton informed the representative of this Committee exactly in accordance with the facts stated in the Evening World, which you have just read.

Mr. Mahar.— That may be your understanding.

Chairman Thompson.— There isn't any question about any understanding. That is the truth that I am telling you now.

Mr. Mahar.— That is probably your understanding of it.

Chairman Thompson.— Will you just permit me to make a statement? Reed & Barton notified our representative after looking at their books that this purchase was made by you on the 15th day of September, 1914, and delivered in October, and that is the statement made on the afternoon of the day that this letter of June 12, 1914, was produced before this Committee. The next morning we sent another representative to Reed & Barton to subpoena their books, and at that time for the first time the representative of this Committee was notified of the facts as you now present them, which are in my judgment the correct facts. But the mistake is not with the Evening World, but with Reed & Barton and no one else.

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Mr. Mahar.— I want more than that on the record.

Chairman Thompson.— You can't put on the record any criticism of anybody but Reed & Barton.

Mr. Mahar.— Mr. E. T. Silver of Reed & Barton will swear that this paper was delivered to me on May 12th, one month before I wrote to Mr. Wood, and this was in possession of your representative from Saturday at 3 o'clock until this article —

Chairman Thompson.— We had it Saturday.

Mr. Mahar.— This article went out in to-day's paper, two days later.

Chairman Thompson.— My dear man, I am telling you the facts, that the whole trouble came from Reed & Barton.

Mr. Mahar.— I don't agree with you.

Senator Foley.— Whose presence did they say it in?

Mr. Mahar.— Do you mean to say that I am going to be accused of perjury?

Chairman Thompson.— I mean to say that nobody is going to come before the Committee and insult the Committee without taking the consequences.

Mr. Mahar.— I don't allow anybody to insult me without taking the consequences.

Chairman Thompson.— We will take the consequences.

Mr. Mahar.— Do you expect people to consider this a fair and unprejudiced investigation?

Chairman Thompson.— You haven't any business to —

Mr. Mahar.— I have business. This article practically accuses me of perjury.

Chairman Thompson.— You have heard the facts, and if you do not like those facts, you go and prove them anyway.

Mr. Mahar.— I don't think there is any excuse for such an article.

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Chairman Thompson.— It is Reed & Barton's mistake, and there is no mistake about it at all.

Examination by Mr. Smith:

Q. I show witness Exhibit 20, 24, 25, 26, 27, 28, 29. Did you ever see those papers or any of them before, Mr. Mahar? A. I can't say that I have.

Q. Well, I don't know. A. I have not seen those papers before.

Q. And by any possibility were they prepared in your presence or under your direction or at your place of business? A. They were not. I have no connection, you know, with the company mentioned there. That is the Northwestern Construction Company.

Q. I understand perfectly — that is, I have no knowledge of any connection. A. All I am asking for here, gentlemen, is for a chance.

Chairman Thompson.— Then don't come here trying to insult people that are trying to tell you the truth. You haven't any cause of action against anybody.

Mr. Mahar.— I am not looking for any cause of action.

Chairman Thompson.— If you have, it is against Reed & Barton, because they gave out the information, and the correct facts are just exactly as you are trying to state. The fact is, you did purchase this paper in May, 1914, but that fact did not develop because Messrs. Reed & Barton gave out misinformation the day before to this Committee, and it came to Senator Lawson's attention from the representative of this company. It did put you in the attitude of not having told the truth, or the facts of the situation, and I agree to all that, and subjected you to criticism to which you were not entitled, but our information now is exactly in accordance with what you say — on the 8th of May.

Mr. Mahar.— I have here the order showing that the paper was delivered on May 12th.

Senator Foley.— I don't think the information obtained by the subpoena should be disclosed officially except to the Chairman.

Chairman Thompson.— Things get out and people who do not want misinformation to get out should not give it.

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Senator Foley.— It was in the possession of the Committee and should not be given.

Chairman Thompson.— We sent an official representative there and got the information.

Mr. Mahar.— I trust that the Evening World will be fair enough to give as much publicity to the retraction as to the original article. There is another thing mentioned in the same article. It said Senator Lawson mentioned that a handwriting expert, after a casual examination of the latter, was of the opinion that it had been written within the last forty-eight hours. If such testimony has been given or is about to be given, I ask the privilege to be represented here by counsel for the purpose of cross-examining this expert to find out through what means and what method he arrived at such a remarkable conclusion.

Chairman Thompson.— We will enlighten you if you will attend the sessions of this Committee to-morrow or the next day. I think we will enlighten you on that.

Mr. Mahar.—All right, sir.

Chairman Thompson.— For the benefit of Mr. Mahar I will state that the correspondent of the Evening World is present and states that his statement will be made public.

I have a communication from Hon. Edward E. McCall, delivered to me at 2 o'clock:

"November 29, 1915.

"HONORABLE GEORGE F. THOMPSON, *Chairman Joint Legislative Committee,* Rooms of the County Lawyers' Association, No. 165 Broadway, New York City.

"Sir: I have considered your request made this morning that I consent to the Bankers' Trust Company permitting your Committee to have access to my private accounts from January 1, 1913. After consideration I decline to give this consent for the following reasons among others:

"Your Committee preferred charges against me to the Governor. It was not required to act when it did. It chose its own time. It could have taken such additional time as it

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needed to exhaust every proper avenue of information. When it did prefer these charges, however, I was entitled by every consideration of fairness and right to remain undisturbed to prepare my answer. Instead of the Committee either completing its case before making the charges or leaving me undisturbed after it had made them, it now attempts to disturb my time and distract my attention almost up to the very day set by the Governor for the hearing.

"What I have to say from now on will be said to the Governor. He can upon request have access to every record or memorandum bearing on my affairs, official or otherwise. As your Committee has exceeded the authority conferred upon it by the Legislature and turned itself into a prosecuting body, I am justified, pending the hearing before the Governor, at least in considering it in its real light as a prosecutor.

"Furthermore, when I afforded your Committee complete access to the books and records of my brokers it abused the privilege and pried into and made public information as to my private affairs as to transactions that occurred years before my appointment to the Public Service Commission and which could have no possible relevancy to the subject matter of its inquiry. In this very matter of my Bankers' Trust Company account you have already made public a matter between George W. Perkins and myself that happened in 1907 and cannot relate to the Public Service Commission work in any way. In view of this experience, while I am ready to afford the freest access to the Governor, I will not accord any further privileges to your Committee.

"Yours very truly,

"EDWARD E. McCALL."

Chairman Thompson.— Now, this is practically the statement made by Judge McCall before the Committee this morning, with the exception that he has given a definite declination to consent to the examination by this Committee of the books of the Bankers' Trust Company from January 1, 1913, to date, as requested, and he has also made it definite that he will upon request of the Governor give him access to every record or memorandum bearing on

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his affairs, official or otherwise. It is not necessary for me to make any further explanation of my attitude in this matter than was made this morning. I disagree with Judge McCall as to the time the Committee should act. I believe it is the duty of this Committee when they find matters that should be referred to other departments of the State that they should act immediately. If a Commissioner in the Public Service is disqualified, or has committed a misconduct, no State officer has a right to permit the condition to continue any longer than to bring it to the attention of the proper officer of the State, and we have simply done what we thought was our duty in the premises, and of course I do not know that we expected the corroboration of Judge McCall in this phase of it, anyway, and it is immaterial. We believe that Judge McCall is not personally on trial, but we do that his office is, and we believe that his duty as a public officer requires him to furnish any relevant information to this Committee at any time. The subject to which his attention was called was not a new charge, and was simply evidence bearing on the charges already in, and a record evidence of such kind that he must have known all about it, and it furnished nothing new on which his answer or brief could have been prepared, and I cannot see any real objection to the request of the Committee, and I still think it was a proper request. As to the action the Committee will take in this matter, I desire to await the return of our chief counsel to the city, and he will arrive to-night, and we will take it up with him and there will be an announcement made in the morning.

Is there anything more to come before the Committee?

Mr. Smith.— Nothing more to-day.

Chairman Thompson.— We will suspend until to-morrow morning at 10:30 o'clock.

(Whereupon the Committee adjourned to meet at 165 Broadway, New York city, at 10:30 A. M. November 30, 1915.)

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NOVEMBER 30, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Meeting called to order at 10:30 A. M., pursuant to adjournment.

DAVID N. CARVALHO, sworn as a witness, testified as follows:

Examination by Mr. Smith:

Q. What is your business, Mr. Carvalho? A. My profession is an examiner of questioned handwriting, ink and paper.

Q. What experience have you had in the matter of the examination of inks and handwritings; indicate generally. A. That has been my constant occupation for the last forty-four years. I have had occasion to examine matters of disputed handwriting and kindred subjects, ink being one of them. Ink in particular I have made almost a life study about. I have had occasion to testify in twenty-three States of the Union, in the United States criminal and civil courts as well as the State criminal and civil courts. For forty-one years I have been the office expert in matters of handwriting of the District Attorney of this county. I may say, as I said before, that has been my profession, sir, for all that time.

Q. Have you seen the paper Exhibit A-1 before? A. Yes, I have seen Exhibit 1.

Q. And have you made an examination of it as to the ink that was used on it? A. I have.

Q. Is it possible to tell when that paper was written from the ink used? A. It is not.

Q. Why? A. Am I to answer comprehensively, Mr. Counsel?

Q. Yes, fully. A. Of the three classes of ink, the ones in use to-day — the commercial inks obtain their color for chemical reasons. That is to say, the constituents of the ink or main constituent is almost a colorless compound, and introduced into that ink is some bluish color for reinforcing purposes, as well as to make it dissoluble when one writes, so that when you write with that ink, the ink of to-day, and I am calling attention now to the commercial inks commonly known as commercial writing fluids, and when you write with them they write a sort of blue color, and

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then after a period of time lapses that color changes gradually to the black. In other words, the material which is in the ink having an avidity for the oxygen of the atmosphere, begins to oxydize and turn black. Now, they are, to use a vernacular of the day, they are known as iron inks, although iron is only one of the constituents. Another class of inks are inks that owe their color to the pigmentary materials that are placed in them. For instance, the blue inks, the red ink that is used for ruling purposes, that comes under the head of a colored ink, and the color is introduced into it. Now, in the examination of Exhibit A-1, without calling attention to the other variety of inks, because this must be an iron ink or it must be an ink into which the coloring matter had been previously introduced. If this ink was an iron ink it would be possible to say whether that ink was honestly of the date of June 12, 1914, because looking at it quickly, it looks like what is called green ink, in the sense of being young, and not long placed on the paper. But a careful scrutiny of it discloses the fact that it is an ink with a base of what is known as Prussian blue, which is a composition used not commercially, but known usually as a safety ink. That is to say, if you wanted to buy that ink you would have to ask for it, whereas if you went to buy a quantity of ink, the dealer would furnish you with a commercial ink like David's or Spofford's or Arnold's, or any of the other half a dozen or more standard inks, but this ink comes under the head of what we call safety ink. That means that it is safety against the employment of an acid, and as against the two little bottles that are commonly sold for the purpose of bleaching out and removing ink. They will not affect this ink. This ink can only be affected by the use of a certain alkali, and therefore measurably it is safety ink, and it is bought and sold as safety ink. That ink has no avidity for the oxygen of the atmosphere, and being a pigmentary ink, when it is placed on the paper it is not affected so that this ink might have been written on June 12, 1914, or it might have been written on June 12, 1915, and it might have been written on September 12, 1915, and yet the three specimens written at the three different times would present exactly the same physical appearance, so it is not possible to formulate any opinion from a chemical test or otherwise, as to the age of the ink that is on Exhibit A-1.

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Q. Is the ink used on Exhibit A-1 commercially sold? A. It is not a commercial ink in the sense of being in general use. In other words, it is an ink that cost two or three times as much as ordinary ink does, and to find it you might have to go into a half a dozen stores before you could get it; you would have to ask for it.

Chairman Thompson.— You would have to ask for safety ink specially in order to buy it?

Mr. Carvalho.— Yes, sir.

Q. I show the witness exhibits stock certificates 26, 27, 28, 29 and 25. Have you examined those certificates? A. Yes, Mr. Smith, I have seen them before, sir.

Q. And have you examined them as to the character of the ink used? A. I have.

Q. Will you describe it? A. The five exhibits with all the long-hand writing.

(Paper shown witness marked Exhibit A-2, 3, 4, 5, 6.)

Chairman Thompson.— Certificate No. 25 is Exhibit A-6. No. 27 is Exhibit A-2. No. 28 is Exhibit A-5. No. 29, A-4. No. 26, A-3.

Mr. Carvalho.— My examination of the inks everywhere on the face of these instruments calls attention to the fact that they also are written in a Prussian blue ink. Not exactly the same as the Prussian blue ink employed on Exhibit A-1, but a Prussian blue ink that cannot be removed by acids, and can only be removed by an alkali, an ink that is not in common use. You would have to ask for it if you wanted to buy it.

Chairman Thompson.— That is a safety ink, too?

Mr. Carvalho.— That is a safety ink as against an acid, yes, sir.

Q. Have you submitted all of these to the chemical test? A. I have.

Q. Did they resist the acid test in each instance? A. They positively resisted the acid test, yes.

Q. Have you made an effort during the last two or three days to purchase in the market in the city of New York these inks?

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A. Yes. I visited yesterday down town five of the largest stationery stores and asked for these inks, and I found them only in one store. The ink is not in general use. For another reason, it is an ink that disintegrates in the bottle and it is not a fine and nice ink to use for ordinary purposes.

Chairman Thompson.— Can you use it in a fountain pen? Will it run in a fountain pen?

Mr. Carvalho.— It would run in a fountain pen for a day, perhaps, and then it would clog.

(Certificate No. 24 marked Exhibit A-7.)
(Certificate No. 21 marked Exhibit A-8.)

Q. I call your attention to those certificates, Exhibits A-7 and A-8. A. A-7, A-8.

Q. What is the character of that ink in the body? A. The ink employed on Exhibits A-7 and A-8 is the ordinary ink of ordinary use, a tanne-galle of iron ink, except running through the body writing of the typewritten portion appears on which the word "cancelled" running criss-cross. That is in the blue ink of the same character to which I called attention.

Chairman Thompson.— Safety ink?

Mr. Carvalho.— Safety ink.

Chairman Thompson.— That is easier for us to understand.

Mr. Carvalho.— Safety ink.

Q. As to the back of those certificates? A. The back of those certificates, being certificates A-7 and A-8, with reference to the signatures?

Q. Yes. A. Those signatures and the date June 2, 1914, on Exhibit A-7, Exhibit 8 having no signature on the back, those are also in the blue safety ink.

Q. I call your attention to Exhibit A-9 for identification. In what character of ink is that exhibit written? A. Well, respecting page 1, that is in the so-called blue safety ink to which I have addressed attention. On page 2, on line 2, there is the words "and payable" which has been interpolated. That is in the ordinary ink

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that is in use. The signature on page 3, "Henry J. Byrne, Jr.," is in the blue safety ink. The filling in on page 4 on the three lines where longhand writing appears, that is in the blue safety ink. All the ink that is employed on page 5 except the word "payable" which is interpolated on the tenth line from the bottom, the word "payable" being in ordinary every-day ink, and all the other ink being the so-called safety ink. On the first line of the page following the words "and payable" are interpolated. That is in the ordinary ink of to-day, while the signature is in the blue safety ink. The next page, dated June 2, 1914, the figure "2" for the second, and the signature "John H. Hack," that is in the blue safety ink. On the next page the date, and the "2" and the "nd" and the signature signed to the paper, that is in the blue safety ink. All the ink filling in on the next page is in the blue safety ink. Everything on the last page, including the five signatures appended to the same, are all in that blue safety ink.

(Paper marked Exhibit A-10 for identification.)

(At this point Assemblyman Feinberg assumes the chair.)

A. Am I to go on with this in the same way, sir?

Q. Yes. A. Exhibit A-10. The first page of the ink writing on the same is in the same ordinary iron ink. So with the second page. So with the third page. So with the fourth page. So with the fifth page. So with the sixth page. So with the seventh page. So with the eighth page. So with the ninth page. So with the tenth page. So with the eleventh page. So with the twelfth page. And so with the last page, being page 13.

Mr. Smith.— I also call your attention to Exhibit A-11 for identification. A. Call attention to Exhibit A-11, page 1 being on the imprint of Carter, Ledyard & Milburn. That is in the ordinary ink of to-day, an iron ink. Page 2 is in the blue safety ink, wherever ink writing appears interpolated. Page 3 likewise. Page 4 the same. That is the end of that exhibit.

Q. Calling your attention to additional exhibits, describe those on the face and back? A. Exhibit A-12. Wherever any ink writing appears, that is an ordinary every-day iron ink, sir, including the word "cancelled."

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Q. And on the back? A. And so I say for what appears on the back of the same exhibit. Exhibit A-13, all in the ordinary every-day ink, except the word "cancelled" which runs through the typewritten body of the same. That is in the blue safety ink, and everything that appears on the back of same is in the blue safety ink.

Q. Wherever you have described an exhibit as written in the blue safety ink, those would resist the test of acids? A. Yes.

Q. And that being the fact, would it be impossible to tell at what time they were written? A. Not because they resist acids, but because they are a pigmentary ink that has no response or makes no response to the action of the constituents of the atmosphere. They will be just in the same condition two years from now as they are now.

Q. That is all. A. Am I excused?

Q. You are excused.

(Recess for a few minutes.)

AFTER RECESS

DAVID N. CARVALHO on the stand.

Chairman Thompson.— I first want to know if this safety ink that you call safety ink is commonly in use in making deeds or papers or written instruments?

Mr. Carvalho.— I don't know whether I quite comprehend you.

Chairman Thompson.— I say is it common here in New York?

Mr. Carvalho.— It is common in New York if you ask for it.

Chairman Thompson.— But do lawyers and other people use this ink for writing legal papers?

Mr. Carvalho.— It is used for writing checks, but not legal documents.

(At this time Mr. John B. Stanchfield appeared before the Committee and examined some of the exhibits.)

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Chairman Thompson.— Do you want to take these exhibits, Mr. Stanchfield?

Mr. Stanchfield.— Not unless some member of the Committee accompanies them. I will take that up with you later.

Chairman Thompson.— The Committee hereby approving that we have not lost confidence in everybody.

Mr. Stanchfield.— That is all right. I am not looking for confidence always.

ROBERT C. WOOD on the stand.

Mr. Wood.— Senator, if I may, I would like to make a statement, so as to get these dates exactly correct. I want to say that I was appointed on May 19th and confirmed by the Senate on that date. Now, on May 22d I wrote Mr. Mahar a letter, the president of the American Sanitary Supply Company, 35 Sixth avenue:

> "Dear Sir: Owing to my acceptance of a public office, I hereby tender my resignation as vice-president and director of the American Sanitary Supply Company, to take effect at once.
>
> "Yours very truly,
> "ROBERT C. WOOD."

I would like to offer that letter in evidence.

Chairman Thompson.— It may be received.

Mr. Wood.— On May 25th I endorsed all my American Sanitary Supply stock over to John A. Mahar, and filled in his name as assignee, thus taking the stock out of my possession absolutely.

Chairman Thompson.— You are swearing to this now, are you?

Mr. Wood.— Yes, I am swearing to it. On May 25th there was a meeting of the Northwestern Construction Company, held at 43 Exchange place. I resigned as president and director of the company. I sold and transferred my stock to P. Erskine Wood. The meeting was conducted under the direction of Lewis Cass Ledyard, Jr., as attorney for P. Erskine Wood. Original papers filed as

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exhibits with the Commission. On May 25th I took oath of office as Public Service Commissioner.

Examination by Mr. Smith:

Q. Mr. Mahar did not know that you had transferred the stock to him at the time that you did make the assignment, did he? A. I think he did. I communicated with him; I don't exactly remember how I sent that stock up to him, but you see my letter to him, which, by the way, he got out of his files, on his files. I asked him to look it up. It is dated May 22nd, so he must have got that on May 23rd. I know I communicated with him and told him what I wanted to do.

Q. Didn't you hear Mr. Mahar testify at a former session that he met you either at the Public Service Commission office or at his place of business, and that you told him that you had turned the stock over to him and wanted him to accept it, or in substance that? A. Yes. He testified along those lines. I heard him testify to that.

Q. Well, what is the fact? A. Well, that is the fact. I turned the stock over to him on that date by transferring it and filling in his name.

Examination by Chairman Thompson:

Q. You did not tell him about it until afterward? A. I may have told him about it that day or afterwards.

Q. That was naturally the Wednesday before this letter was written? The 12th of June? A. No, I think I did it before that.

Q. Was he lying in that? A. No. I don't remember exactly the day that I did it, but the stock passed out of my possession on May 25th.

Q. What does he mean in the statement in his letter that he got it the Wednesday before the 12th? A. He got the physical possession of the certificates.

Q. It did not pass out of your possession? A. Yes, sir, you know that.

Q. That is your claim? A. You know it is the fact, if you know anything about stock certificates.

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Q. I don't pretend to know anything more about it than a man who would make a transaction without putting revenue stamps on. A. Have you ever made a transaction without putting revenue stamps on?

Q. I don't know; I will have to look it up when I get home the same as you have. A. That is the surest way.

By Mr. Smith:

Q. Commissioner, in what banks, trust companies do you keep your accounts? A. I have a small account in the Central Trust Company, and one with the Lawyers' Title and Trust, and one with the Twenty-third Ward Bank.

Q. And that condition has continued for how long? A. The Twenty-third Ward Bank is only a recent one. I have had the Central Trust Company two or three years, and the Lawyers' Title and Trust, I think that has been, offhand I would say nine or ten years.

Q. Have you had any other account with any bank or trust company other than those you have mentioned within the last two years?

Chairman Thompson.— Since May 1, 1914.

Mr. Wood.— May 1, 1914? Yes, I had a small account in the Commercial Trust Company of New Jersey.

Q. Any other? A. No.

Q. And have had no other? A. Well, I may have had a few dollars in the Corn Exchange Bank, but I think that has been closed out.

Q. Any other? A. I had an account in the German-American Exchange, I think I did, too — German-American Bank, I should say. I don't recollect any other at present.

Q. Any other? A. No, I don't think there is any others.

Chairman Thompson.— Now, this letter of June 12, 1914. Do you go back on that in any way?

Mr. Wood.— No, sir, I do not; I stand right on the letter.

Chairman Thompson.— It enclosed a dollar, as it says?

Mr. Wood.—Absolutely.

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Chairman Thompson.— For the American Sanitary Supply Company stock "turned over to me on Wednesday last?"

Mr. Wood.— Yes, sir.

Chairman Thompson.— That is the situation?

Mr. Wood.— Yes.

Chairman Thompson.— Now, you say you went on and endorsed those to Mahar without saying anything to him until later?

Mr. Wood.— I communicated with him as soon as I could.

Chairman Thompson.— But you had confidence enough in Mr. Mahar as a friend of yours, you could take the liberty to use his name?

Mr. Wood.— I did not have confidence. I wanted to get rid of the stock, and I endorsed his name to it.

Chairman Thompson.— Mahar is a good friend?

Mr. Wood.— Not necessarily. He was the logical man to go to.

Q. How did you know he would give you a dollar for it? A. I didn't know it. All I wanted to do was to get a consideration for it.

Chairman Thompson.— You wanted to get it into some other name?

Mr. Wood.— I wanted to get rid of the stock, and comply with the stock statute, just as I have done it, as I have guided all my actions.

Chairman Thompson.— The Committee will suspend, but I wish to announce that I will have a statement that I will make myself, that I am ready to give out in reference to the McCall phase of this situation as it came up yesterday, and I will have that ready as soon as I can, as I can give it to the stenographer, and have it ready in the course of an hour, but we won't do anything else this afternoon. The statement will be in relation to the Committee's attitude in regard to Mr. McCall's attitude in reference to his books.

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AFTER RECESS

(The following is statement of Chairman Thompson):

"Judge McCall wrote to the Governor Saturday asking for a delay. He knew when before the Committee yesterday that his request was pending, but did not so inform the Committee. This situation was rather inconsistent with his attitude that he was hurried and did not want to be disturbed.

"On Saturday the attorney for the Bankers' Trust Company was told precisely what the Committee desired in reference to the 387 shares of the Kings County Electric Light and Power Company stock. The information could have been easily furnished.

"No request was made for any information that was not strictly material. Judge McCall, however, definitely refused to permit such information to be disclosed.

"This Committee will prove the charges pending before the Governor and which justify Judge McCall's removal. For that reason we are not inclined to press the matter of the books further or otherwise jeopardize the possibility of a hearing on the day fixed.

"Any further action on our part to obtain these books either through the Governor or court procedure might further tend to delay the hearing on the charges now pending. We will not take any such action in view of a possible further delay.

"As stated by the Chairman yesterday to Judge McCall, we deem it our duty to the public to see that no Public Service Commissioner, properly subject to the charges we have made, should remain in office any longer than is necessary.

"Judge McCall takes issue for bringing to light his transactions found in the bank book prior to 1912, in answer to which this Committee states that these are the books which the Judge gave consent to examine, and the facts only became public through his effort to stop the investigation.

"Judge McCall also doubtless forgets that the stock in question had to be traced back as early as 1903 to ascertain

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ownership. This Committee has complete confidence in its right to fully ascertain the transactions of a public officer under investigation, and to that end to examine his bank account.

"The hearings before the Committee will, of course, continue, but in order not to complicate in any way the disposition of the McCall charges, this Committee does not now intend to forward charges against any other Commissioner until the charges against Judge McCall are determined."

On motion the Committee adjourned to Wednesday, December 1, 1915, at 10:30 A. M.

DECEMBER 1, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Meeting called to order at 10:30 A. M., pursuant to adjournment.

The Chairman.— The Committee will come to order. Send for Commissioner Wood, and send for Secretary Whitney. We also want Commissioner Williams later on in the afternoon. I wish you would notify him.

Now, I think we better take a recess for fifteen minutes. There isn't anything else.

Mr. Smith.— Nothing else.

Chairman Thompson.—We will take a recess for fifteen minutes. I will apologize to the members of the Committee and people who have business before the Committee for my lateness this morning, without giving any reason for my apology, because I had to have a conference with a Senator from up the State, and it had nothing to do with this matter. But we will take a recess for fifteen minutes.

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AFTER RECESS

The Chairman.— The Committee will come to order.

ROBERT C. WOOD on the stand.

Examination by Mr. Smith:

Q. Commissioner, do you remember the matter before the Public Service Commission in regard to the signals of Fourth Avenue, Brooklyn? A. Fourth Avenue? Do you mean a year ago this fall? There was two of them.

Q. Yes. A. Yes, in a general way.

Q. And was that a matter which was investigated by you personally? A. Not particularly, no. I mean it was not referred to me for any personal investigation. I looked into it the same as I would anything else.

Q. What was the apparatus that was being installed at that point? A. Why, the apparatus as I remember it now called for was the A. C. track circuit system of the road that was operated by direct current, as the propulsion and ordinary current track circuit system.

Q. Was there any application made to the Commission or any member of it, to your knowledge, to have that apparatus installed without competitive bidding? A. Well, as I remember it —

Chairman Thompson.— Let him tell the circumstances about it.

Mr. Wood.— I may not be exactly right about it, but as I remember it I went down to Berwick with a party that the American Car and Foundry Company asked to go down and look over their new steel cars of the Brooklyn Rapid Transit Company. They were building those new 67-foot cars for them down there, and I think they had some of them completed.

Chairman Thompson.— Where is Berwick?

Mr. Wood.— Pennsylvania. And in the party that went down was Mr. Turner, principal assistant of Mr. Craven, and Mr. Wilder, and Hall, George Gibbs' partner, and a number of other officials of the Commission. When we were down there, I remember — that is, on the way — I fixed the date in my memory — the

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B. R. T. people informed us that they had just received the bids for this new installation, and as I remember it, it was a million and a half, and the engineer's estimate had been three millions, and then they said that they had had an offer from the General Railway to install another kind of a system, and they were discussing that system on the way down there. I mean our engineers were, and the B. R. T., and I remember Hall and Wilder were drawing diagrams of it, and discussing it. That was about the first I heard of it.

Q. The first you heard of it? A. Yes. The first I heard of this new system could be controlled, and they were not very certain themselves as to how it would work out.

Q. Now, let me ask you again, was there any application made to the Public Service Commission or to you as a Public Service Commissioner for the privilege of making this installation without competitive bidding? A. Well, now, as I remember it, the B. R. T. wrote the Commission saying that they had received — this is all a matter of record and can be verified. I am simply speaking from memory — saying that they had received the bids, and then after the bids were received I think it was the General Railway Company had made an offer to install what they considered a better device, and if the better device did not prove satisfactory they offered to put in the regular A. C. track circuit system instead.

Chairman Thompson.— Now, let's see just a minute, so that I get these facts — this equipment was for the subway of the Fourth Avenue, Brooklyn?

Mr. Wood.— Fourth Avenue in Brooklyn, and some of the other tracks.

Chairman Thompson.— How much of a contract did it involve?

Mr. Wood.—As I remember it, it was, in round figures, about a million and a half.

Chairman Thompson.—And it was for semaphore and speed devices and automatic stops, was it?

Mr. Wood.— The automatic stops were included in it.

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Examination by Chairman Thompson:

Q. And this matter came before the Public Service Commission for approval because the Public Service Commission in behalf of the city were constructing that Fourth Avenue Subway? A. It came before the Public Service Commission under approval of Contract 4. That is, the Public Service Commission had to approve the expenditures made by the company before they were finally settled.

Q. I say the city constructed the subway? A. Yes.

Q. And the Public Service Commission was the agency of the city in constructing the subway? A. Yes.

Q. And these signals had to be installed by the operating company, B. R. T.? A. Yes.

Q. And involved a million and a half? A. In round numbers.

Q. Now, at first what Mr. Smith wants to know whether the B. R. T. asked you to let the contract, and as I understand your answer, they did, to let the contract without competitive bidding. A. No, not without competitive bidding.

Q. They did in the first place? A. I am only talking from memory. It is all a matter of record, in that signal file. As I remember it, they gave all these signal companies an equal opportunity to figure on this new cab signal system, and, as I know, there was a discussion over it, and I know that the city saved about two hundred thousand dollars or three hundred thousand dollars.

Q. Well, I was not asking you that. Probably they did before they got through, but that don't satisfy us in wanting to know how that was brought about. A. I understood all the companies had an opportunity there in figuring on this new cab signal system.

Q. Where did you get that information? A. I think President Williams told me and Mr. Menden.

Q. Is that a matter of record in the Public Service Commission, your conversation with President Williams and Mr. Menden? A. That my conversation with them was in my room and there were other Commissioners around.

Q. You know what I mean by a matter of record, don't you? A. You mean it was taken down in shorthand.

Q. Do you know what I mean? A. Yes, I know what you mean. I am trying to think whether it is a matter of record.

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Q. I don't want your thought; just answer that question yes or no, or else that you don't know? A. Well, I don't know.

By Mr. Smith:

Q. Was the letter written by the company that you speak of before or after your visit to this Pennsylvania town to examine the new steel cars? A. It was afterwards. I am quite certain it was, because they did not know very much about it then themselves, I mean their engineers. They were investigating.

Q. And there were no bids received at that time, were there, by the company? There had been no bids? A. I think there had been, yes, as I recollect it.

Q. And they discussed that with you on the occasion of your visit to Berwick? A. Did not discuss it with me. I heard them talking among themselves and I asked about it. Mr. Menden said he was looking into it, and I think Wilder was looking into it, our engineer. They were not very clear themselves then how it would work out.

Q. Who got the bids, the company? A. The B. R. T.

Chairman Thompson.— Who were the bidders?

Mr. Wood.— I think there is a regular list of those signal companies. I don't remember who they were.

Chairman Thompson.— Just get Mr. Wood the record, and let him tell us who bid.

Mr. Wood.— There was the Federal Signal Company, the Union Switch and Signal, the General Railway, and the Hall Switch and Signal.

Chairman Thompson.— Who were they?

Mr. Wood.— The Federal Signal Company.

Chairman Thompson.— Of where?

Mr. Wood.— I don't know where they come from. I believe they have a plant in Albany. The Union Switch and Signal.

Q. Where does that company have its plant, the Union? A. Somewhere down in Pennsylvania. I am not sure.

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Examination by Chairman Thompson:

Q. Aren't you sure where they are? A. No.

Q. Where is that office? A. Here in town. I think they all have offices over in Church street.

Q. Just think quite hard about where the office of the Union Signal Company was, where it was at that time. A. I don't know where it was at that time.

Q. You don't know? A. No, I don't know.

Q. Or the plant of the company? A. Somewhere down in Pennsylvania, as I recollect.

Q. You couldn't remember the town it was in? Was it a small town or a large town? A. I couldn't tell you.

Q. Now, who else was there bidding? A. The General Railway Company.

Q. Where are they located? A. Rochester.

Q. New York? A. Yes.

Q. Who else? A. The Hall Switch and Signal.

Q. Where are they located? A. I don't know where their factory is.

Q. Who else bid? A. Apparently that is all.

Q. Who was the low bidder? A. Well, according to these figures I am reading here, $1,395,000 for the Federal; the Union Switch, $1,536,000; the General Railway, $1,812,000; the Hall Switch and Signal, $2,256,000. Now, that was the first proposition, apparently.

Q. The Union was the low bidder, then? A. No, the Federal was.

Q. You say that was the first proposal. What was done with those bids? A. Well, before we acted on them, if I remember, why, Colonel Williams asked to submit another bid, other bids.

Q. Is that a matter of record? A. Well, it must be. He could not have done it informally. It was. Here is a letter from Colonel Williams:

> "At the conclusion of opening bids, the General Railway Signal Company asked if consideration would be given to the supplementary proposition which they desired to submit, which was considered by them superior in efficiency to the original one, and patents covering which had come within

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their control a day or two before. They were advised in the presence of the other bidders that this company would undoubtedly entertain supplementary propositions if embodying improvements over the signal system specified, it being understood, however, that such submission must be promptly made. Three of the companies presented such propositions. The General Signal system on September 22nd. The Union Switch and Signal Company on October 1st (since withdrawn). The Federal Signal Company subsequent to the date last mentioned. The proposition of the last named company as presented is not satisfactory to our engineers in the details set forth. The features of the proposed cab speed control system as presented by the General Railway Signal Company have been carefully studied by our engineers, with the conclusions that the essentials involved can be made effective, and when accomplished will provide a safer and more efficient system than the one which we originally specified. In view of the fact, however, that the proposed system has been only partially tried out in actual service, it is deemed essential that the contractor assume full responsibility for the design, efficiency, engineering detail, construction and installation of each and every part of the mechanism, pending satisfactory accomplishment of which, however, a signal system as originally contemplated should be installed to the extent required for immediate operation. The General Railway Signal Company have not only agreed to make this latter installation, but in the event of the proposed new system not being satisfactory, will oblige themselves to provide for an amount less than that quoted by the lowest bidder the entire installation as specified in plants and specifications originally submitted. This supplemental proposition involves the following:"

Chairman Thompson.—Anyway, on account of certain facts, therein set forth, asked to have a new letting?

Mr. Wood.—A new award.

Chairman Thompson.— Well, it is a new request for bids?

Mr. Wood.— No, they had already received the bids.

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Examination by Chairman Thompson:

Q. Well, wasn't there another submission of bids after that time? A. Yes, there was a submission of bids.

Q. So that these bids that you have now told us about were all ignored and thrown out, weren't they? A. The first ones were.

Q. And those you have testified to or called our attention to were all ignored and thrown out, and the new bid asked for; isn't that the situation? A. I should judge so from this letter.

Q. Now, get to these second bids and tell us what those were. A. At the conclusion of the opening bids, the General Railway Signal Company asked if a consideration should be given to a supplementary proposition which they desired to submit.

Q. You have already told us about that, but get to those second bids and tell us who they were. A. As to cost, the General Railway Signal proposed for the cab system — I have got to read it.

Q. Read it to yourself, but get down to those submission of bids and tell us what they were. A. They were $1,293,494, to which would be added the price of $75 for each car equipment which on 1600 cars estimated maximum would make $120,000, or a total cost of the improved system of $1,413,494.

Q. Whose bid is that? A. That is the General Railway's.

Q. That is the Rochester concern? A. In case this new system should not be a success, the specifications of August 5th would be complied with at the sum of $1,292,000, without charge for any car equipment installed.

Q. That is the same bid? A. That is the General Railway bid.

Q. What other bid was there? A. The other company submitted the statements, but they say they were not satisfactory.

Q. That don't make any difference. They made a bid, didn't they? A. I don't see the figures quoted here.

Q. Didn't that Union Signal Company make a bid? A. "Union Switch and Signal Company, on October 1st (since withdrawn)". No, they withdrew.

Q. What other company made a bid? A. The Federal Signal Company.

Q. Where are they located? A. As I said before, I think their factory is in Albany. I don't know.

Q. Wasn't there a time when the Public Service Commission was considering two different offers to furnish these signals for

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this line? One by the General Company of Rochester and one by another company? A. One by the Federal Company. The Federal Company simply proposed to install.

Q. Answer that question before you explain it. Wasn't that the fact, before the Public Service Commission was the question as to the award of this either to the General at Rochester, or to the Federal? A. Yes.

Q. Now, I am going to ask you again where the Federal offices are. A. I don't know.

Q. Did they have an office in this city? A. I don't know.

Q. But those two offers were considered by the Public Service Commission, were they not? A. Yes.

Q. And subsequent to the matter that you have been indicating to us from the record, subsequent to the time mentioned in that letter? A. Yes, must have been.

Q. How much later? A. Must have been just about that time that I first heard about it.

Q. Was there any division in the Commission as to the opinion? A. Yes.

Q. How did the Commission stand? A. Why, the Chairman and Commissioner Maltbie voted for the Federal, and Commissioners Cram, Williams and myself voted for the General.

Q. And pending your vote, did you make any particular investigation, or was the matter referred to you specifically in any way? A. No. I spoke to Mr. Wilder about it, and I spoke to Mr. Gibbs and Mr. Hall, and to Mr. Gibbs' partner. I talked to Turner about it. I think Menden was over. I think we had a couple of conferences in the Chairman's room, and I spoke to him about it. Let's see who else was there. I think that's all.

Examination by Mr. Smith:

Q. Was there any indication of a divided opinion in the Commission after a final vote came? A. Well, there was a question of whether this cab signal system would be able to actually work out in practice, and I inquired of our engineers very carefully as to their opinion, as to what their opinion was, as to whether the cab signal system could actually be worked out, and they all agreed that it was the coming thing. They thought it was going to supersede the regular track circuit system.

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Q. That was the higher-priced of the two? A. The track circuit system, yes.

Q. And you say you did not make any personal investigation? A. Well, I asked our engineer; that is all I could do.

Q. Did you get to the plant of either of the companies? A. No, sir.

Q. Or to the plant of any other signal company? A. No, sir.

Q. Or to the office of either of the companies during this discussion? A. No, sir.

Q. Or to the office of any other company? A. No.

Q. Did you have occasion to go to the city of Pittsburgh at or about that time? A. I have never been to Pittsburgh in my life.

Q. How far is Berwick from the city of Pittsburgh? A. Well, I can best answer that by saying it is about three and a half hours to Scranton, and about an hour and a half to Berwick. Pittsburgh, I understand, is an all-night ride; so I don't know.

Q. Is there any signal company or any company producing any part of this apparatus in discussion, at the place called Berwick? A. No, sir. Berwick consists almost entirely of the American Car and Foundry Company shops there.

Q. Did you meet anybody in Berwick from Pittsburgh on the occasion of your visit there? A. No, sir, not as far as I know.

Q. Had no talk about signal systems when you went there? A. No, sir, not outside of the men that I have spoken of.

Examination by Chairman Thompson:

Q. Did you ever talk with an officer or employee of the Federal Signal Company? A. I think Mr. Cade came up to see me once.

Q. Who is he? A. I don't know. I think he was vice-president. I think Mr. Renshaw — yes I saw him and Mr. Renshaw in the Chairman's room.

Q. You had a confidential talk? A. No, sir.

Q. Well, didn't you have a talk with one of those gentlemen, with nobody else present? A. I think once Mr. Cade came up to see me. That was in June, and I had never seen him before. Didn't know who he was when he came in.

Q. Well, you did have a talk with him when there was nobody else present? A. I think I did in June.

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Q. Does he live in Pittsburgh? A. No, he doesn't as far as I know.

Q. Well, did he then? A. I don't know where he lived.

Q. Well, he was connected with that Federal Company at that time, wasn't he? A. Yes, sir.

Q. Is he the fellow that has since left the employ of the Federal Company and now employed by the General Company at Rochester? A. I don't know anything about Cade.

Q. He came to see you in New York? A. Yes, a year ago last June.

Q. And you had a talk with him? A. Yes.

Q. And who was this other man you talked with? A. Renshaw is the president.

Q. Did you have a talk with him? A. I think I was introduced to him in the president's room. I never talked to him except in a general way about the merits of the different things.

Q. You say Cade was the vice-president of the company? A. I don't know whether that was his title or not. I think it is.

Q. Now, is that your recollection about it? A. I never talked to Cade about this thing in my room.

Q. I did not ask you what you talked about in your room. I asked you if you did have a talk? A. I know Cade and Renshaw were in the Chairman's room.

Q. This particular matter, the award of these bids either to the Federal Signal Company or to the General Signal, was a matter of taking of testimony and a matter of formal proceeding? A. No, sir.

Q. What is this here? A. That is the first one. That is the Center street loop.

Q. What is this, for signals, too? A. I am talking about the Fourth avenue subway.

Q. Tell us about the Center street loop; tell us about that? A. The Center street loop, that was when I first came on the Commission; I think, as I remember it, about the middle of June. Colonel Williams sent in the bids that he had received for equipping the Center street loop. I remember it was about $200,000, in round numbers. Referred to the Chief Engineer for report. Then about two days later the Union Switch Signal Company sent in a protest which was referred to me.

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Q. At your request? A. I don't know. It may have been.

Q. Well, don't you know whether it was or not? A. I think it came in and the Chairman was looking at it, and he said, "Do you know anything" — he knew I was interested in electrical matters, and he said, "You take this thing up, and let me know what you think about it."

Q. He knew you were interested with electrical matters? A. Yes.

Q. Had you given this particular question of signals unusual study? A. Not any more than other matters. I have taken courses in electricity.

Q. I say this matter was subject of your particular inquisition? That is, the matter was referred to you? A. Yes.

Q. And you sat as the Commissioner that heard the testimony? A. Yes, I did.

Examination by Mr. Smith:

Q. Will you tell us whether this matter was referred to you at your request? You have told us some things the Chairman said. Was the matter referred to you at your request? A. I don't remember of making any request for it, but it was a matter I was interested in, and I would have liked to have sat and heard the testimony.

Q. Did you tell that to the Chairman of the Commission? A. I don't remember whether I did.

Q. Well, at any rate, you did receive it for consideration? A. Yes.

Q. What did you do? A. I think we had a conference on it.

Q. Who? A. Turner, and Wilder, and Hall, and Menden, of the B. R. T., and I think our assistant counsel. Who else was there, there were several others in my room. And then the representatives of the Signal Company, too.

Q. At that time? A. Within a day or so, yes.

Q. Well, they were not present at this conference in your room? A. Yes, all of them.

Q. And they also had subsequent conferences with you? A. No, I think we only had one general conference there.

Q. I am not talking about general conference. I am talking about special conference. A. I think — just let me conclude —

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then after the general conference we had, then I suggested the best thing to do would be to have a hearing on it, and we had a regular hearing which the minutes show there.

Q. Pending the hearing shown by the minutes, did you have any other or further conference with the representatives of the signal companies, or any of them? A. I don't remember. I think after the hearing, the lawyer of the Union wanted to submit a brief, and I think he came up and asked my permission to do so, and then, as I said before, I think Mr. Cade came in to see me.

Examination by Chairman Thompson:

Q. Well, who were the bidders in this matter? A. Have you got the list there? The general list is three or four of them there.

Q. You can remember about it. You had this matter in your charge. That was the first case you had, after you got on the Commission that you had charge of? A. No, I think the 120th street station was the first.

Q. But this was a matter of importance, and it was referred to you, and you looked into it and studied it, and your recollection is perfectly clear about it. Now, tell us about it. Who was the low bidder? A. The low bidder?

Q. Yes. A. The low bidder was the Federal, as I remember it.

Q. Wasn't the low bidder the General of Rochester? A. No, the General was away high.

Q. And the Federal was low? A. Yes, and I recommended it be given to the low bidder.

Q. But you voted for the high bidder? A. I did not.

Q. You voted for the General? A. You get these two things mixed up.

Q. Well, explain it to us. A. I voted for the Federal in this case, and I voted for the lowest bidder, and I voted for the General because they were the lowest bidder before and because our engineers recommended it in both cases.

Q. Now, where is the Federal located in this matter? Where is their office? A. I don't know.

Q. Isn't the Rochester concern doing the work? A. No. The Federal has already done it.

Q. They did this work? A. Yes.

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By Mr. Smith:

Q. You say you voted for the Federal? A. Yes.

Q. In this loop proposition? A. Yes.

Q. How did that vote come about, if you recollect, Commissioner? A. Why, I know we were in a hurry to get the thing settled and the chief engineer wrote a long report and counsel wrote a long report on it, and the day counsel's letter came down we acted on it, and I voted for the Federal, recommended that it be given to the Federal.

Q. Was there any motion pending at that time to take it away from you as sitting Commissioner? A. No, sir; I never heard of such a motion.

Chairman Thompson.— You had trouble about it?

Mr. Wood.— No trouble whatever.

Q. Any recommendation from Commissioner Williams that you hurry the thing along? A. No, sir.

Q. Had no discussion of delay? A. There was no delay on it, Mr. Smith. We acted the day counsel's letter came down. There was just three weeks. I know what you mean. I answered that in my brief.

Examination by Chairman Thompson:

Q. That has been gone into in this way. Commissioner Williams testified last spring that there was something wrong about your attitude in this matter, testified before this Committee last spring. Did you ever see that testimony? A. I have gone into this thing very thoroughly, because I went into it in my brief. I have read Commissioner Williams' testimony.

Q. Then you knew he testified last spring when before this Committee, that there was something wrong in your attitude? A. No, I didn't know that at all.

Q. Well, what did he testify to? A. He testified that he was anxious to see this thing settled, and I agreed with him.

Q. You agreed with him after a while? A. No, sir, I agreed with him immediately.

Q. You did not agree with him — in the morning you and he were apart? Didn't he testify to that? A. No, sir; he did not.

(Recess until 3 P. M.)

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AFTERNOON SESSION

COMMISSIONER WILLIAMS on the stand.

Examination by Mr. Smith:

Q. In what banks or trust companies have you accounts, Commissioner? A. The Brooklyn Trust Company, which was formerly the Long Island Trust Company. I had an account in that. It was consolidated with the Brooklyn Trust Company.

Q. Any other? A. Since my appointment as Commissioner I have also had an account which is now closed, with the Title Guarantee & Trust Company, which was just a special account on some buildings, some flat houses I owned, and apartment house. When I got rid of it I closed out the account.

Senator Lawson.— That account is now closed?

Mr. Williams.— That account is closed. I have a small farm account — I have a farm at Chester, N. J.— sales of any kind, receipts of any kind I try to put in the Morristown Bank, and then check out against it, but it is a very small matter. This is an inactive account, because there is very little coming in from the farm. I do not imagine I have a balance of more than $200.

Senator Lawson.— Any other?

Mr. Williams.— That is all.

Q. That was all I intended to ask you this afternoon. A. It may be that since my appointment I had a small account in Albany. When I was appointed counsel for the Conservation Commission and I carried an account in Albany, but I closed that out in a week, as soon as I could, as soon as possible after my appointment. I don't remember just how long.

Senator Lawson.— You closed that out as soon as you were appointed Commissioner?

Mr. Williams.— Almost immediately.

Examination by Senator Lawson:

Q. Commissioner, what was the name of the Brooklyn bank that you had your account with, that was afterwards merged with the

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Brooklyn Trust Company? A. The Long Island Loan and Trust Company. I don't remember just how long ago that merger was, but it was during the time I have been Public Service Commissioner.

Q. Now, Commissioner, what, if any, jurisdiction do you as Commissioner of Public Service have over the enginering body of your Commission? A. Well, they are under the Commission. Sometimes I think that the engineers tolerate us Commissioners around. They run things as far as the engineering is concerned pretty much as they think it ought to be done, and as an ordinary thing the Commission stood behind them, because we consider that they are a very competent body of men.

Q. Well, does any one or all of the Commissioners make any effort to direct the efforts of the engineers in any way? A. As far as the construction of the new subways and elevated lines under the dual contract is concerned, I suppose the Chairman has had more to do than anyone else, more frequent conference with the chief engineer and his assistants. That was the way during Mr. Wilcox's time and it has been so during Judge McCall's time.

Q. Then you have never assumed any personal supervision over any one or all of the engineering force? A. Why, certainly not over any one engineer, but as one of the members of the Commission, of course we would assume the control over the whole engineering force, and there have been times when I know as to places where there has been construction, that we have gone out either one or two of us and looked over matters where there had been a complaint, and brought the engineers in and asked them about it. A matter came to my attention a few days ago in regard to some treads on stairs where they said the engineers had discriminated against their company, and I asked for a report on it and am going into it further. There are numerous cases of that sort and cases of routes and locations of stations and station entrances.

Chairman Thompson.— Pardon my interruption, but I want to call the attention of the Committee to the fact that it is honored by the presence of Senator Newton.

Q. Is this the only case of a complaint of an engineer under the engineering force that has been brought to your attention since you have become a Public Service Commissioner? A. Why, this

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was not a complaint exactly against the engineering force, as much as it was to find out the reason why their product was not accepted as well as anyone else's.

Q. Well, if you found an engineer delinquent in exercising the duties prescribed, what action would you take as a member of the Public Service Commission to call him to account? A. I don't think there has been any such delinquency called to my attention, at least.

Q. You do not think there have? A. There have been a number of the engineering force, I know, that some inspectors of masonry have been laid off, and things of that sort.

Q. Did you know there was an inspector or engineer in your department by the name of C. A. Stagmuller? A. I don't recall the name, no.

Q. You don't know whether there was any such man or not in the enginering force? A. I do not without reference to the records.

Q. Well, now, Commissioner, if one of the engineering staff had been found responsible by county, city or State official of any delinquency in duty, would that have been called to your attention? A. Why, I should think it might have been called to my attention, but I do not remember the name. I do not remember the name. If you will tell me the circumstances probably I might recall something about it.

> Senator Lawson.— Well, Commissioner, "On the 25th day of November, 1914, a laborer by the name of Gaetano Lo-Forese came to his death at Montague & Clark Streets by fracture of ribs and laceration of lung. By unanimous vote of the jury we find the Public Service Commission through its inspector, C. A. A. Stagmuller guilty of criminal negligence in not ordering due precaution to be taken at Furman & Clark Streets where wall fell on the deceased on November 25th, 1914."

Now, Commissioner, do you know anything about that case?

Mr. Williams.— Yes, I remember something about the case.

Examination by Senator Lawson:

A. Although of course, the name is entirely gone from me, and as I remember it was — there was a cave-in or something of that

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sort on the tunnel that O'Rourke & Company or their assignees were doing, and there was a man killed, as you state; that an inspector of masonry nothing more or less than an inspector that had nothing to do with it, was called in before the coroner — I get this second-hand. You have asked me for it — I get it from Mr. Whitney or the legal department somewhere. Our inspector went before the coroner and the coroner said, who is to blame for the accident down there? Who is doing the work? The fellow swelled up and said "I am." He said, "Who is doing the work — who is responsible for everything that is happening down there?" He said, "I am." He said "I guess you are the man we want," and the coroner's jury found him guilty. As a matter of fact, when it came before the grand jury, the grand jury threw it out. He was never indicted and as a matter of fact any negligence there, I am informed by our Department, was a negligence of the contractor.

Q. Well, have you ever investigated the case outside of what you have heard casually? A. That is all. These are reports that came to me about the time.

Q. Now, if I were to say to you that the information that has come to you is not in line with the sworn testimony given by Stagmuller before the coroner, would you say that you placed any credence in the rumor? A. Why, certainly I wouldn't place any credence in it if I saw his sworn testimony. I don't think it was ever investigated. Mr. Whitney probably could tell you better about that. At least it was never brought to my attention after that time.

Examination by Chairman Thompson:

Q. Who of the Commission, Commissioner, pays special attention to the engineering force — any one of the five commissioners? A. I said the Chairman as to matters of construction.

Q. Matters of construction left to the Chairman? A. Not entirely, but he has more frequent consultation with the engineer.

Q. Matters respecting the engineering force come to the attention of the Commission through the chief engineer? A. Yes.

Q. Always? A. Oh, no. I know there is a number of cases where it has been brought to the attention of the Commission from outside, like the case of ventilating the subways.

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Q. The matters in relation to the engineering force are always taken up through the chief engineer? A. Yes.

Q. And his reports and recommendations to the Commission are accepted by the Commission — you have confidence in him and accept his decision in relation to all engineering matters? A. As to the method of doing work and to expense and cost, yes. But not all.

Q. Is there an instance since you have been on the Commission, where the Commission itself would turn down the recommendation of the engineer? A. Just as I stated before, location of stations.

Q. On an engineering matter? A. On an engineering matter I don't recall. Yes, on an engineering matter, I can remember one case where the engineer was very much opposed to the Brooklyn line of subway running directly up Broadway at Canal street, and the Commission at that time, the old Commission, that was, that was considering these routes, overruled the chief engineer, and it was after the railroad company had agreed to pay the additional amount.

Q. Here is what I am trying to get at. Judge McCall always takes the engineer, he is guided entirely by Craven, isn't he? A. Well, I wouldn't want to say that Judge McCall was always guided by Craven. I'd rather Judge McCall would be asked that. I cannot say that, Senator. I know Judge McCall esteems Mr. Craven very highly, and considers him a great engineer, as we all do.

Examination by Senator Lawson:

Q. Do you know, Commissioner, whether this man Stagmuller is still in the employ of the Public Service Commission? A. No.

Q. Have you ever made any effort to find out? A. No.

Q. Weren't you interested in any way? A. It was not called to my attention since the time it was taken before the Grand Jury and thrown out.

Q. You would know, of course if a man in Brooklyn was killed and negligence was charged against a servant of the Public Service Commission — you would be interested enough to ascertain, wouldn't you? A. I was interested enough to ascertain, or I was informed, rather, when it was thrown out by the Grand Jury.

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Q. Now, so as to give you a little better light on this subject I want to briefly state the answers of Mr. Stagmuller, sworn to before the Coroner:

> "Q. You were down there as a civil engineer? A. I was on inspection duty. Q. With the authority of a civil engineer? A. Yes, sir. Q. Isn't it the duty of the Public Service Commission to ascertain the character of the soil before permitting the men to perform their duties there; they ascertain the condition of the soil and ascertain whether it is safe? A. Yes, sir. Q. Did the Public Service Commission ascertain the character of the soil and exercise precaution in saving the lives of the men? A. It is hard to answer that question. Q. It was their duty to do that? A. Yes, sir, the soil is exposed. Q. It is their duty to examine the soil? A. Yes, sir. Q. And to exercise safety and due care? A. Yes, sir. Q. Did they exercise it on that day; they had a warning a couple of days before? A. As far as having made any test, I don't know, but as I say, the soil was exposed."

Further on in the testimony the question arises:

> "Q. Then they should have shored up the wall for protection; they do that in all lines of work of that kind; the city does it, why don't the Public Service Commission? A. If you pardon me, to the best of my knowledge all the time I saw this particular piece of work, there was quite a bank in front of it; of course if it was shored, it would have made it absolutely certain.
>
> "Q. If you as an inspector of the Public Service Commission had ordered the contractors to shore that up, they would have been compelled to do so, wouldn't they; you had the authority to compel them to shore it? A. Yes, sir. Q. And you did not do that? A. No, sir."

Now, I just call that to your attention, Commissioner, for the purpose of ascertaining what jurisdiction the Public Service Commission themselves individually or as a body exercised over these engineers. Do you exercise any or do you leave it entirely to the chief engineer? A. No. If that matter came up, I have never

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seen it, it was never brought to my attention. If it had been I would have sent a man down there and found out what there was about it. I presume there was an investigation made of that, and Mr. Ridgeway, the subway engineer on construction, could tell you all about that.

Q. Well, these papers are on file in the office of the district attorney of Kings county and the matter is still awaiting final determination, but what I wanted to understand was how close you or the other Commissioners were to the engineering staff, and what steps you had taken, if any, to question these men as to delinquencies charged by this coroner's jury? A. The engineer has a very strict method of checking his men up. The promotion depends entirely on their good work and any demerits they get — they have, I believe, the best system in the State among any force that I know anything about at least, but just what was done about this case I can't tell you. I think Mr. Ridgeway can tell you all about it.

Q. What would you say as to the Commission's jurisdiction over the engineers? A. We certainly have jurisdiction over the engineers.

Q. That is what I say. Do you assume the jurisdiction you have or do you leave it entirely to Mr. Ridgeway, or the chief engineer? A. No, we do not leave it entirely.

Q. You did in this case? A. I don't know. In that case I imagine there was an investigation. Perhaps Mr. Craven can tell you. It was never brought to my attention, that testimony.

Q. Do you know whether there is any records in the Public Service Commission of the charge against this man for the death of this laborer? A. No, I do not.

Q. Well, you could find out, couldn't you? A. Yes.

Q. Well, if there are such records, will you produce them for us? A. Yes.

By Mr. Smith:

Q. Do you recognize it as a fault of your system that a matter of this character should fail to come to your attention as a Commissioner? A. Why, it may have been brought to the attention of the Chairman; I don't know. It may have been brought to the

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attention of some of the Commissioners, but I say it was never brought to my attention except in that informal way.

Q. I still insist — do you recognize it as a defect in your system that it should not have been called to your attention, a matter of this character? A. I don't think so, not necessarily.

By Senator Lawson:

Q. Suppose, Commissioner, that ten or twelve men had been killed through a neglect in shoring up subway excavations over in the Eastern Parkway. Would you call that a defect in the system, if it was not officially called to your attention and you did not exercise? A. It certainly would be called. On all those accidents it has been called to our attention and we have gone to the scene of the accident and made an investigation, but I don't want to be placed in the position that any Commissioner did in this event, but as I say it was not called to my attention.

Q. In other words, you mean to contend that this is an obscure accident? A. No, I wouldn't say so, but it came to my notice in this way, that this man went down there before the coroner and took the responsibility for the whole thing on his shoulders when he was not responsible at all.

Q. But you did not investigate? A. Yes. What came to me was from the legal department or Mr. Whitney.

Q. But you know the record does not show that. A. I know what you read from the testimony.

By Mr. Smith:

Q. Do you know how that view came to you or through whom? A. I don't know whether it was the Secretary or some one connected with the legal department. I know the man was held over until somebody from the Commission could go over, and, as I remember, get him out or get bail for him, or something of that sort, and it came to me in a casual sort of a way, just as I have described, and I did not even remember the name when you spoke of it.

Q. Who would be directly the superior of this man as you have described him, mason inspector? A. Well, who his immediate superior was I wouldn't say. He would be under Mr. Ridgeway.

Q. I recognize that, but do you know anything about who

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would be his legal superior? A. No, I do not. Whoever would happen to be the engineer in charge of the work at that shaft would be his immediate superior.

Q. Does your system require that written record be made of accidents of this character of complaints against employes? A. Oh, yes.

Q. Or do you take those up orally? A. No, it is in writing.

By Chairman Thompson:

Q. Then there must be some record of this? A. Yes.

Q. We would like to know whether that man is still in the employ of the Public Service Commission as an inspector or engineer.

Mr. Smith.— And what his title is on the pay roll.

Examination by Chairman Thompson:

Q. Commissioner, what corporation are your stocks in? A. Well, Senator, I haven't held any stocks of any corporation, any public service corporation, since long before Governor Flower died, and even then I only had a margin account long before they required stamps.

Senator Lawson.— You have never bought any stamps then?

Chairman Thompson.— You understand the law in reference to transfer stamps thoroughly, now?

Mr. Williams.— I ought to.

By Chairman Thompson:

Q. Have you any stocks in any corporation? A. I have stock in a Masonic publishing supply house, McCoy Publishing and Masonic Supply Company. I am one of the directors. I am president of the company. I own a five hundred dollar stock. That is all the stock I have except Holstein and Berkshires on my farm.

Mr. Lawson.— Are they public utility stocks?

Mr. Williams.— They are not. They are private stocks, and expensive stocks, too.

Q. That practically all the stocks in corporations you have ever owned? A. No. On the day Governor Flower died I held United

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States Steel, very much to my sorrow. Perhaps it was a good thing, because I never bought a share of speculative stock since.

Q. Do you practice law, Commissioner? A. I do not.

Q. Are you in a partnership that does? A. I am not.

Q. I understand your name is carried in a partnership in Brooklyn? A. No. That is not so. I was in partnership with Mr. Richardson at the time I was appointed to the Commission, but dissolved the partnership and did not have any interest in any way, shape or manner in the business from that time until now. The only receipts I have ever gotten from the concern was from one case that is closed.

Q. Isn't that still carried as Williams & Richardson? A. The name Williams & Richardson is still on the door at 55 Liberty street, and I still pay the rent of one room in which I keep my library and safe. I have no interest and the firm is not carried on in my name at all.

Q. But you still maintain those offices, don't you? A. No. I have one room which is independent of the others. At the time of my appointment, the offices were on the sixth floor and last spring when it looked as though I might soon be in private practice again, they were about to move the offices, and I said I would be glad to take a room if they got larger offices with Mr. Corwin. I have nothing to do now. I said I would be glad to take a room adjoining them, and I have a large library that Judge Daly left to me, or gave to me before his death, and also a safe, and a few things like that, and so I pay the rent of one room.

Senator Lawson.— That is fully equipped so you might resume practice at any time that you so desire?

Mr. Williams.— Well, it would not take me long to get back in the harness, I guess, but I have not been in the office once a month. I have not been in my old office or the office of Richardson once a month on an average since I became Public Service Commissioner.

Examination by Mr. Smith:

Q. Do the new offices have the firm name? A. The name Williams & Richardson is on the outside door.

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Q. Of the offices to which they moved? A. Yes. Williams & Richardson is on it, although there is no business conducted under the name of Williams & Richardson whatever.

Q. Why was that name put on the new offices this spring? A. I don't know, unless the door was moved, or something of that sort.

Q. While your room is independent of those offices, if necessity required, is it also in connection with them? A. A door between, yes.

Q. Any of your mail go to those offices? A. If it does, it is forwarded to the Public Service Commission. Nothing goes there except circulars, perhaps, from law book concerns, or something of that sort, that has had my address at 55 Liberty street for some years.

Q. Has the concern as it now exists any business for or connection with the railroads or public utility corporations that you know of? A. No. Never has had.

Q. And is not retained by any of them now? A. Absolutely not, in any way, and Mr. Richardson has never appeared before the Commission in any way.

(Senator Thompson resumes the Chairmanship.)

Examination by Chairman Thompson:

Q. I was talking about Mr. Richardson — your name is in the telephone book, Williams & Richardson, and carried so now? A. I don't know.

Q. But you say you have no interest in the business? A. No, and I have said while you were out that I have not been in the place once in a month since my appointment to the Public Service Commission. And the Senator asked if there had been any business for public service corporations, which there has not been, and Mr. Richardson has never appeared before us.

Q. You have not any stock in industrial corporations? A. No. The only stock I own in the world is that little publishing house.

By Mr. Smith:

Q. You did not have occasion to transfer or attempt to transfer any account? A. No.

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By Chairman Thompson:

I think his testimony taken last March, the pages there, ought to be offered in evidence while he is here.

Mr. Smith.— I wish to offer and have incorporated in the present record, pages 842 to 866, inclusive, of volume 1 of the final report of the Joint Committee of the Senate and Assembly for the investigation of Public Service Commissions.

Chairman Thompson.— That is your testimony in reference to the Center Street loop and Fourth Avenue subway and signal account.

Mr. Williams.— I handed you up some corrections and I went over that very carefully, because I find I was mixed, I think I would like to correct that.

Mr. Smith.— If there is any correction.

Mr. Williams.— My impression is I said there and I glanced over roughly or quickly before I came over here, after hearing what the inquiry was about this morning. My recollection is I said that the Federal Signal was opposed by the General Signal Company, who said they held the patents, and so on; but the fact is that the opposition to the city contract before Commissioner Wood was on behalf of the Union Switch and Signal; so that is the testimony.

Mr. Smith.— At this time I also would like to offer in evidence the testimony of Travis H. Whitney, on pages 866 to 874, inclusive, of the same record.

(Received.)

Examination by Senator Thompson:

Q. On page 861:

"Have you learned in any way or heard in any way from any person on any subsequent time anything that you think this committee ought to know? A. I have mentioned Mr. Auerbach by name, he came with a proposition that comes to my mind very vividly, and they claim that he came before the Commission. Mr. Auerbach came to me, I was sitting in

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a case, and told me that he was going to move to reopen that case, and I said that was all right, there was an attorney who had appeared for it, and he said that he would ask to reopen that decision, ask to reopen it, and that he appeared for the Federal Signal Company?"

A. I don't recollect that I stated just in that language I do recollect the mistake.

Q. What is the mistake about it? A. They claimed that he came before the Commission — I don't know what that means. They claim that he came before the Commission — that line I do not understand.

Q. But the rest of it is correct? A. And he came in before the meeting at a regular meeting, I suppose there is minutes of it.

"Q. Who had been the original low bidder? A. Yes, and he said that there were things in the case that would startle me if I knew them, and I asked him to tell me what they were and he said he would rather not, and it was arranged he should come before the Commission and make his statement, and he did come and make some such statement to the effect that Mr. Renshaw who had appeared at the time the contracts were approved, at the time the bids were up for approval, and he came to a meeting of the Commission, and wanted to reopen the whole matter, and said he had some things that would startle the Committee, or words to that effect; we asked him what they were, and he declined to say what they were, only he said that Mr. Renshaw had been there and that he wanted to reopen this thing and take more testimony, and we voted while he was there, I think, that not having any good reason for it, that it shouldn't be reopened, and the contract was approved. I understood later that the contract had already been signed at the time he asked to reopen it, which would mean of course that we couldn't have rescinded our consent to the contract."

Q. Is that about the way? A. That's about the way, but he said something, would say more at the meeting. Whether that was before or after, I don't know. But, as I say, there must be

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minutes of that meeting. The stenographers were always present at a regular meeting. The stenographer doesn't always write everything that is said unless he is asked to. I think you will find that every word taken at the meeting was not taken down.

Then the next question:

"Q. But he didn't tell you anything that would startle the community? A. No, sir. He promised to if we would reopen the case and let him have a hearing. Q. He said he would if you would dispose of it on some other ground? A. He didn't say what — where he would tell this startling information or anything of that sort."

That is your answer.

"Q. He said he had it? A. He said he had it. Q. And could tell it? A. Yes, sir."

Q. That is correct, is it? A. As I remember it now. It was fresh in my mind then. I have not seen —

Q. "Q. Did you ever find out from any other source or in any other way what that information was? A. I was informed, but after I had made an inquiry, though. Q. What inquiries did you make? A. Yes, I did."?

A. That evidently is a line dropped out there.

Q. "Q. What did you find? A. I found this: I found that one of the men connected with the Federal Company previous to Commissioner Wood being appointed on the Commission, while Commissioner Wilcox was yet a Commissioner and Chairman of the Commission, that Commissioner Wood had sought employment or to be retained by this Federal Company in their New York matters. And I told Commissioner Wood this, and asked him about it, and he did admit — I would rather you would ask Commissioner Wood about this, I wish you had asked him when he was here, but he told me he did seek to be retained by the General Company, by the General Company, by the Company that got this

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contract, the General Company. Q. That is the Rochester Company? A. The Rochester Company. Q. The final successful bidders? A. Yes, sir."

A. And Commissioner Wood came out with a statement the next day, telling exactly what his connection —

"By Senator Mills: Q. I just wanted to find out, Commissioner, who was the officer; can you give us this information? A. I don't know what officer of the company he was. Q. What is his name? A. His name was Finucane, a man who had been arguing before the Chairman against that General Company which got this contract." Finucane was the General fellow?

A. I think that is a mistake. Because I don't think Auerbach said anything about Finucane at all, or anybody else, but Finucane was in to see Judge McCall in favor of the General contract.

Q. And then afterwards by Assemblyman Knight.

"Q. I understood you to say, Commissioner, you had bids for the letting of the small contract to the Federal Company; did you so testify, the first letting? A. Yes, at first. By Colonel Hayward: Well, that General Federal Company, that is the General Company he is speaking about now. Assemblyman Knight: I understood he stated that he had been interested in the Federal Company. A. No, the General Company; that he asked, or sought a retainer, or sought to represent the General Company before he was appointed to the Commission, and that Mr. Auerbach said to me afterward that there were two affidavits in existence that he relied on; I don't know whether he thought it was after Commissioner Wood was appointed to the Commission that he made the overture, because he never — the testimony at least of the whole thing was before Wood?"

Q. That is correct, is it? A. Certainly the testimony as to this question, but as to the first contract was before Commissioner Wood.

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Q. Well, what Mr. Auerbach said about having two affidavits in existence is correct? A. I don't remember whether Mr. Auerbach said he had two affidavits, but it came to me through Auerbach or somebody else at that time.

Q. Well, this is the way he testified to it before? A. There are some corrections there.

Q. What correction do you want to make? A. I don't want to make any, but I did make them at the time, but whether they were incorporated in them or not I don't know. But that is the fact. Either Mr. Auerbach or somebody else that had two affidavits from two people to the effect that Mr. Wood had sought to be retained by this Federal Company, leaving the impression clearly that it was since Commissioner Wood's appointment to the Public Service Commission, and I went to Commissioner Wood immediately and asked him the facts, and he told me just as I said there, that it was before his appointment that he did go to Rochester to seek to be retained for their New York business, and it seems to me he said — he can tell better than I — that he did bring some of the other company down to see Commissioner Wilcox; somebody from that company; and I think Commissioner Wood made a statement about that time to the public press.

Q. Then the next question:

> "By Colonel Hayward: Q. Did he tell you what was in the affidavits? A. No, I never heard. Q. He said the affidavits protected him in connection with the matter, he thought? A. No, I think Mr. Auerbach referred to the affidavits — Mr. Auerbach said the affidavits protected him in making the statements he had made. That was after we had denied the motion to reopen the matter that Auerbach told me that."

A. I remember that it was the same day we denied the motion that Mr. Auerbach came upstairs and went in to see Judge McCall.

Q. Where was that conversation in relation to these affidavits, Commissioner? A. Well, I don't remember.

Q. Did he state that before the whole Commission? A. No, he did not.

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Q. He did state it to you? A. He did — Mr. Renshaw or somebody. I think it was Auerbach. I would not be positive as to that — stated that either to me personally or in my presence to Judge McCall.

Senator Lawson.— That he had them?

Mr. Williams.— I don't think that Auerbach ever said that he had the affidavits, but that somebody had affidavits.

Senator Lawson.— Didn't he say he was protected in what he said in having the two affidavits?

Mr. Williams.— You have my testimony and it was fresher then than it is now.

Senator Thompson.— You looked it up before you went on the stand?

Mr. Williams.— Yes.

Senator Thompson.— And your attention had been called to it before you came on the stand last spring?

Mr. Williams.— I don't know, but I think I had the files in my hand at that time.

Chairman Thompson.— I have issued a subpoena for Mr. Auerbach, returnable at four o'clock, and he has called me and asked to have it changed to ten-thirty to-morrow morning, which has been done.

ROBERT C. WOOD on the stand:

By Mr. Smith:

Q. Have you completed your statement in regard to this signal transaction, as far as you care to make it, Mr. Wood? Is there anything you want to add to that now? A. I may later on. It is rather a sudden question just now.

Q. Did you ever testify before the Committee, Commissioner, on the question of seeking employment of one of these signal companies, prior to your appointment as Public Service Commissioner? A. No, I did not seek employment. I met Mr. Salmon in the summer of 1912 and I was interested then in the

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Northwestern Construction Company. We were manufacturing fuses and connectors, and I suggested to him that I would like to sell him some fuses and connectors.

Examination by Chairman Thompson:

Q. Who? A. Salmon.

Q. Who is he? A. He was President of the General Railway Signal.

Q. Where? A. Rochester.

Q. Where was this suggestion made? A. He was down here at New York at the time, and he said he would look at them, as I remember. I went up to Rochester — I was on a trip up the State then — I went to Rochester and went on to Buffalo, and went on to Northeast afterwards, and I stopped over in Rochester for a half a day and Salmon said he would like to show me the plant of his company there, and I went up and went through the plant with him, and I went to Buffalo and to Northeast and came back.

Q. You had gone through this signal plant? A. Of the General, yes.

Q. Then you were quite familiar with these matters when you came on the Commission? A. No. Signaling is a very intricate matter, and you cannot learn the art of signaling by simply walking through a plant.

By Mr. Smith:

Q. Of course, you know at this time that this signal company was dealing with railroads and in railroad construction? A. That is the only company that ever buys signal apparatus, as far as I know. This was in the fall of 1912 — September, I think it was, 1912.

Q. Was that what jogged your memory when you became Public Service Commissioner in the disposition of your Northwestern stock? A. No, sir. I wanted to get rid of it. That had very little to do with it. We did very little with signal companies.

Q. You wanted to do more than you had been doing? A. A man is in business, he naturally wants to extend his business if he can, doesn't he?

Q. Yes. A. Well, I am human, and I plead guilty to it.

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Q. You made an effort to extend it through association with this General Signal Company? A. At that time.

Q. At any subsequent time? A. No, I don't think I seen Mr. Salmon — rather I did not see him from that time until he came up to the Commission's office. I saw him in the Chairman's office after Colonel Williams had sent over this request.

Q. What other signal company did you attempt to make sales of Northwestern product? A. Well, I think we did a little business with all of them. The Northwestern used to make primary batteries until they were put out of business.

Q. Did you do this business yourself largely? A. No. Banks attended to it mostly. I did some of it myself.

Q. How much of it? — Visit these different companies at different times? A. At times, yes, seldom.

Q. What ones had you visited for the purpose of developing the Northwestern? A. I had been in the Hall office.

Q. Where is that? A. I think at the time it was 25 Broad street.

Q. What other companies? A. Might have been in the Union office.

Q. Where is that? A. 30 Church.

Q. Is it still there? A. I don't know whether it is or not.

Q. What other signal? A. And I had been in the General Railway office.

Q. Where is that? A. Well, at that time it was in that Liberty Tower building.

Q. Where is it now? A. I don't know.

Q. Did you ever visit any other plant than the General Company's plant at Rochester? A. That is the only plant I ever visited.

Q. Do you know where any other plant was located, or was at that time? A. At the time, no, except that I knew the Union was somewhere down in Pennsylvania. I cannot think of the place; I have never been down there. I believe that Hall had a plant out in New Jersey, but I have never been there.

Q. Did you ever associate yourself in the Northwestern Construction Company with more than one gentleman by the name of Banks? A. No.

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Q. So whenever you refer to Mr. Banks, you refer to the same person? A. Yes.

Q. And the person to whom your brother sold the company? A. That is the one.

Q. And when did he become interested in the company? A. I think it was the end of 1911, if I remember rightly. Yes, he came with the company again in 1911.

Q. But not by the ownership of any stock? A. No. He owned the Banks Manufacturing Company, he called it, and the Northwestern Company leased some patents that he had in the Banks Company, Banks Manufacturing Company. They were primary battery patents.

Q. And he had no stock interest in the concern until the sale by your brother? A. That is it.

Q. At the time of that lease, did the concern merge physically; that is, do business in one location, the Banks and the Northwestern? A. They did not merge physically. The Banks Company went out of business, and the Northwestern had a lease of their patents, and the Banks Company had a factory up in the Bronx, where they made these primary batteries, and the Northwestern leased that factory, and then the Northwestern also had an office down town.

Q. And was Mr. Banks an office man or the person in charge of the factory? A. Well, he was both. He used to oversee the factory, but he was in the office, both.

Q. Did you confine yourself to the office work? A. Yes. I am not a practical mechanic, not to any extent. I had other business, though, besides that; I was just interested in that.

Examination by Senator Lawson:

Q. You say you visited the New York offices of the Hall Switch and Signal Company? A. Yes.

Q. The General Railway? A. Yes.

Q. And the Union Switch and Signal? A. Yes.

Q. And the Federal? A. No, I have never been in the Federal.

Q. Don't you know where their office is in New York city? A. No.

Q. Do you know where their factory is? A. It is in Albany. Then the orders would come in. We have done some business

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with the Federal — the Northwestern did some business with the Federal.

Q. Who did that business, you? A. No, Banks. The orders came in.

Q. They came from Albany or New York city? A. I don't know now.

Q. You don't know whether you did business with the New York office? A. No, I do not. Possibly their office was at 30 Church. I don't know, I have never been in their office.

By Senator Lawson:

Q. Now, Commissioner, did you hear the questions that I asked of Commissioner Williams when he was on the witness chair on this matter of inspector of your Commission being found guilty of negligence by the coroner's jury of the county of Kings here recently? A. Yes.

Q. Well, tell us what your attitude would be as regarding the exercise of supervision over the engineering department? A. Why, I think you have to hold the man in charge of the job responsible, and for him to get results for finishing that job.

Q. Well, suppose that he is found guilty of negligence by a competent official like the coroner. What would you do in a case of that kind? A. I think I would investigate the coroner to see how much he knew about it.

Q. Would you call for the record of the coroner before you investigated? A. No, I would want to look into the case myself to see what the merits of the case were.

Q. Well, if the coroner's jury sat on one of your inspectors, and afterwards found him guilty by unanimous vote, wouldn't you be satisfied with his investigation then? A. No, sir; I wouldn't. I would want to know he knew something about it first.

Q. Now, suppose that a matter of this kind had been called to your attention; what would you do? A. Why, look into it and investigate it and find out whether every proper precaution had been taken, and proper supervision had been made of the work.

Q. Did you look into this case? A. No, that was a Brooklyn case.

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Q. Don't you look into Brooklyn cases? A. Yes, I go over there quite frequently, but that would not come under my direct supervision.

Q. If it was a Bronx case, what would happen? A. Why, I would go and look into it.

Q. Now, I hand you the record in the matter of Gaetano LoForese, together with the finding of the jury, and I would ask you whether you do not think it comes within the purview of your duties as a Public Service Commissioner, whether you reside in the Bronx or any other part of the greater city — you think it would be your duty to investigate a matter of that kind? A. I certainly think all proper supervision should be taken and proper precaution taken, but where you have an organization, you have got to hold the head of your organization for tearing out the work.

Q. And you are one of the heads of this Public Service Commission, and we want to hold you responsible for negligence in not looking into this matter. That is just why I am asking you questions. If we can't hold you responsible and the people can't, who can? A. What was the result?

Q. The man was found guilty. A. A coroner's jury.

Q. And what was done after?

By Chairman Thompson:

Q. Did you ever hear the case before? A. Yes. I don't know what the final determination was.

Q. Tell us what you know about it. A. I heard this fellow went and took all the responsibility himself, and he got held for it by the coroner's jury.

Q. Did you take any action towards firing him, or do you still retain him, or didn't you pay any attention to it? A. I supposed the chief engineer, through the division engineer, had settled it.

Q. (Repeated.) A. I don't know what has been done.

Q. You did not pay any attention to it? A. No, I didn't do anything further after hearing about it.

Examination by Mr. Smith:

Q. Why do you distinguish between your obligation to take care of a matter of that importance, because it was in Brooklyn,

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and your assertion if it was in the Bronx you would have taken care of it? A. I would have heard more about it, if it had occurred there.

Chairman Thompson.— Whereabouts do you live?

Mr. Wood.— Westchester. Little town road, Eastern boulevard.

Chairman Thompson.— What is the number?

Mr. Wood.— We don't have any numbers. At a country club.

Examination by Chairman Thompson:

Q. Do you own it? A. No, I do not.

Senator Lawson.— Any stock in it?

Mr. Wood.— No.

By Chairman Thompson:

Q. That is your voting residence? A. Yes.

Q. How long has that been your voting residence? A. About two years. I voted twice from there.

Mr. Smith.— Where was your voting residence before that time?

Mr. Wood.— 3910 Albany avenue.

Senator Lawson.— Well, where was your voting residence when you were appointed by Governor Glynn?

Mr. Wood.— 3910 Albany avenue.

Chairman Thompson.— What sort of a place is that?

Mr. Wood.— Frame house over there.

Examination by Chairman Thompson:

Q. Occupied for what? A. Occupied as a residence now.

Q. What was it occupied for then? A. Well, it was partly a supply store and hotel.

Q. Anybody else live in it at that time except you? A. Yes.

Q. Who? A. A man named Chase — two brothers.

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Q. What did he do? A. He ran a commissary department and hotel.

Q. What was the commissary department? A. In connection with that aqueduct job — Masons and Hangers.

Q. Who patronized that? A. The foremen and superintendents.

Q. Did you stay right along in the hotel? A. No, I did not, I had a room and complied with the law.

Examination by Senator Lawson:

Q. Now, Commissioner, will you tell us with as much detail as you can sum up, what the duties of a Public Service Inspector are with reference to the man who was indicted or found guilty by this coroner's jury? A. You mean an inspector of masonry?

Q. No. I mean a Public Service Commission inspector who goes over and takes charge of building a subway. A. There is a division engineer.

Q. What was this man's duty, this man Stagmuller, what was his duties, in detail, the man assigned where this accident happened? A. I don't just know just exactly what Mr. Stagmuller was.

Q. He was an inspector of the Public Service Commission? A. We have a number of inspectors. We have transit inspectors.

(The following was read by Senator Lawson:

"Where do you reside? 795 East 8th Street, Brooklyn. What is your vocation, Mr. Stagmuller? Civil Engineer, Public Service Commission.")

Q. Now, can you tell us? A. Well, I presume he was the one that gave him the stakes.

Chairman Thompson.— No presumption.

Mr. Wood.— I don't know specifically what this man's duties were.

Examination by Mr. Lawson:

Q. Now, he was assigned on November 25, 1914, to take charge of the work of the Flynn & O'Rourke Company. Now, what would an engineer do? A. He would have to give them the

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stakes, have to give them the grades, and have to see they carried forward their work properly, have to show them where to work and where their stakes are.

Q. Hasn't he anything more than that? A. See that it is properly carried on and see proper brick is used, and proper concrete.

Q. Does he have anything to do with the supervision of the shoring? A. Yes, has to see proper strength is used there, and proper supports; has got to see the work is carried on properly, and with precautions for the safety of the public as well as the workmen.

Q. And you think it was this man's duty to see that this was properly shored up? A. Now, I would have to look into that very carefully before I would pass on his duty.

Q. There is the finding of the coroner's jury. A. It is very broad and very indefinite here.

Q. It is not any more indefinite than your statement of what the inspector's duties are. A. You give me a specific question and I will answer it.

Q. What was this man's duty? A. He was an inspector and would have to give the grades.

Q. You, the head of one of the departments that has control over public utility corporations, and you are presumed to know what the duties of your subordinates are? A. Yes. But we have got to have subordinates under us to see their subordinates carry out their details of their duties, too. It would be physically impossible to go and sit in the Commission and conduct hearings, and consider cases, and be out on the work all the time, and see what everybody was doing.

Q. Too busy to do that? A. It would be physically impossible.

By Mr. Smith:

Q. You recognize your obligation, however, as a public official to do both of those things? A. I recognize my obligation to see it is properly done, to have proper men at the head of the organization, and see it is properly carried on, and I think we have an organization second to none over at the Public Service Commission, and I not only think so myself, but I have heard other men who know more about it than I, say so, and that they could congratulate the city on the organization they have, and the way

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the work is carried on, and if you gentlemen would look into that a little more you would realize what is being done, and see what this Commission is doing.

Examination by Chairman Thompson:

Q. Well, what are they doing? A. They are building subways in New York.

Q. What else? A. And they are carrying that work forward right to completion, too.

Q. And what else? A. Coming down here a good deal.

Q. Anything else? A. No, that takes all my time now, Senator, practically.

Q. Those are very general statements, what you are doing, about building subways and carrying them to completion. Anybody would know that. Now, what great things are you doing? A. Senator, there are a good many details.

Q. You have made a very impassioned statement about your engineering force. A. I stand on every bit of it, too.

Examination by Senator Lawson:

Q. You don't know what they do? A. I did or I do.

Q. You couldn't tell us a little while ago. You say they are the most competent body in the world, and you couldn't tell us what the inspector's duties were.

Examination by Chairman Thompson:

Give us — we are not impressed by your general oratory about your engineering force — give us definite details about the work, to show us the efficiency. Get down to something.

A. We have a chief engineer.

Q. What does he do? A. The chief engineer has general supervision over all these contracts.

Q. That is a platitude. A. You asked me what they do. If you will give me time —

Q. Go to it. A. He has the general supervision over all, and then we have his principal assistant in the office, and then Mr. Ridgeway is the man in the field. There are, I think, six division engineers, and under them are the section engineers, and their assistants, and then come the assistant engineers who look over

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this business and details of the work in the field, and they have to supervise just how these contracts are carried out, just where the grades of the subway, give the stakes for the lines, and see that the work is properly carried on.

Q. Is that all you know about it? A. Well, I don't go into the general — I am not a civil engineer.

Q. Now, you made an awful extravagant statement. I want you to back it up by something. A. Well, there are the results out there to go and look over and see what is being done.

Q. Those do not impress us. A. I am very sorry.

Q. As I understand, you base your statement entirely on what has been accomplished by this engineering force. A. I think that is a very impressive thing, very impressive, and anybody goes over and looks at it cannot fail to be impressed.

Q. Do you suppose those people who were in the trolley car on Seventh avenue were impressed as much as you are, when they went down in the street a few weeks ago? A. I think we have a small percentage of accidents in construction work of that magnitude.

Q. Is that one of the things that ought to impress the community as bearing on the efficiency of your engineering corps? A. I think it was a most unfortunate thing.

Q. Do you think that ought to impress the community as bearing on the efficiency of your engineering force? A. I don't think the engineering force is responsible.

Q. Just answer the question. A. Do I think it ought to impress the community?

Q. Yes. A. I don't know how it ought to impress the community.

Q. Do you think the community was impressed? A. I certainly do.

Q. How much time did you spend? A. I was up there every day for a week.

Q. Still, you think the engineering force is a very efficient body, notwithstanding all those things occurred? A. I certainly do.

Q. And there could not be anything told you that would make you think any different? A. I would have to investigate very thoroughly before I would change my opinion.

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Q. Because that's your engineering force, and it was there when you went there? A. Yes.

Q. And that's all you know about it? A. Yes.

Examination by Mr. Smith:

Q. You have explained what other people have done in the physical construction of the subways? A. Yes, sir.

Q. And how efficient their performance has been, engineers, inspectors, assistants, all down the line? A. Yes.

Q. Now, specifically tell where you are a necessity as a part of the organization in the physical construction of the subways; where do you come in?

Chairman Thompson.— I want you to answer that question, and I don't want you to make any other statement.

A. The physical construction of the subways?

Q. Yes. A. I do not go down and work with the men.

Chairman Thompson.— He wants to know where you are a necessity over there.

Mr. Wood.— Well, in the executive sense, and seeing that the work is carried on, and seeing that the work is pushed, and seeing that the interests of the people are looked after.

Assemblyman Feinberg.— As a matter of fact, you rely on your engineering force to come to the conclusion whether work is being pushed rapidly or not.

Mr. Wood.— No, sir, we do not.

Examination by Assemblyman Feinberg:

Q. Do you go over each part of the work to ascertain whether it is progressing according to the engineer's plan? A. I have been over the part in my district very thoroughly.

Q. Do you confine yourself to the part of the subway work being done in your district? A. No. I go over it all.

Q. What do you do A. I walk over it, go around in an automobile, see how it is going on.

Q. Do you have plans with you at the time? A. Sometimes I have taken them.

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Senator Lawson.— Can you read them, Commissioner?

Mr. Wood.— I can read a blue print fairly well.

Senator Lawson.— Do you ever go over to Brooklyn and walk over those subways?

Mr. Wood.— It is a long distance over there.

Senator Lawson.— You think that is further than the Bronx?

Mr. Wood.— Yes.

Chairman Thompson.— When you go to Brooklyn, you come back as quick as you can.

Mr. Wood.— No, it is a very nice place over there.

Examination by Chairman Thompson:

Q. Now, to get back to this signal business. That is what we want to talk to you about this afternoon. When this came — before you went on the Commission, it now develops you were interested in the business of this construction company, which has recently been turned to? A. It was never secret. I was always openly identified with it. You say it now develops.

Q. Yes — it now develops you were — it now develops that this construction company of which you owned all the stock was quite interested in business with these various signal companies? A. Not quite interested. It did business.

Q. It did business with all of them but one? A. Which was that, the Federal?

Q. Yes. A. It had done business with the Federal.

Q. And you were interested in that kind or nature of business before you went on the Commission? A. I always said so.

Q. When you came in here to-day, your recollection about this thing was quite hazy? A. Well, I beg your pardon, it was not.

Q. I agree with you, but you did not express it to us? A. I answered every question you asked me.

Q. Now, we have got you so I am explaining to you what I meant "it now develops," because you certainly impressed the Committee when you first came in with the fact that these matters were quite foreign to you and it was hard for you to recollect. A.

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I think I told the Committee I was interested in electricity for some time.

Q. Now that we have got all acquainted with it and we are interested in it and before you went on the Commission, will you please tell me if you were not going to the Public Service Commission a great deal before you went on in reference to these very matters? A. I was not.

Q. Didn't you go there? A. I went up there with Mr. Salmon, and saw Mr. Wilcox, and this was in the summer of 1912, I think it was, and he referred us to Ridgeway, I think it was. Craven was away at the time, and Ridgeway said there would be no equipment done for two or three years.

Q. You say you were not a frequent visitor at the office of the Commission? A. No, I was not.

Q. Do you think Mr. Travis Whitney, the Secretary of the Commission, would perjure himself before this Committee? A. I don't know; I have no idea what he would do.

Q. Have you got confidence in him to the extent that he would testify to something that is correct? A. If you mean his testimony is concerned, I think it is false. I mean as far as what was —

Q. Mr. Whitney was asked this question before this Committee, February 12th, 1915, testified as follows, and was asked the following question:

> "By Colonel Hayward.— Q. I do not think you have answered in my question in which I told you what Commissioner Williams told us about your telling him, when he talked to you about Mr. Wood having representing some companies, or something of that kind. Now, what was there about that? A. Why, I said to him — I can't recall the exact conversation or the exact language that was used, but that before Commissioner Wood was appointed to the Commission, he had been a very frequent visitor to some of the offices of the Commission as a representative of a supply house, railway supply house, respresentative of a signal company, or something of that kind, and calling on the engineers of the Commission."

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A. I never represented —

Q. Now, did Mr. Whitney testify to the truth there or did he testify falsely? A. I won't say he testified falsely, but I think he is mistaken there.

Q. Now, answer my question. Did he testify to the truth or not? A. Partly.

Q. Well, then, he did not testify to the truth? A. I was not a frequent visitor.

Q. Well, just answer my question. Did he testify to the truth or not? A. I should say he was partly mistaken.

Q. Well, just anwer my question, and I insist on your answering, as to whether Mr. Whitney testified truthfully or not. If he testified truthfully, he did; and if he did not testify truthfully, he did not. A. I want to know what your question is specifically.

Q. (Repeated by stenographer). A. That is not true. Mr. Whitney was mistaken. I won't say he was intentionally mistaken, but he was mistaken.

Q. Well, you did go there, did you? A. I did.

Q. What did you go there about? A. Went there on various matters relating to the Bronx.

Q. Well, what were they? A. I might have talked over electrical matters with Wilder.

Q. Didn't you go there to try and sell some electrical appliances? A. No, I did not, because what good would it have done? They could not sell them there; the Commission does not buy electrical appliances.

Q. You were in the business of trying to sell these electrical appliances? A. I had an interest in the business.

Q. That's what your vocation was at that time. A. No, it was not.

Q. That is what you were interested in? A. One of the things.

Q. And you went to the Public Service Commission in aid of your business in selling these appliances? A. No, not that I remember.

Q. Well, what was it that you had to go to the Commission for at that time? A. I used to go up there. Sometimes on matters that related to the Bronx?

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Q. Well, what were they? A. Pushing things. I wanted to see the Jerome Avenue Subway built, and wanted to see some of the other matters built, and various other matters coming up.

Q. What were the subjects of your discussion when you went to the Public Service Commission? A. I don't remember exactly what they were. I never went there very much, I used to drop in occasionally.

Q. You never went there to talk about signals? A. No, sir; I never talked about signals, except the day I was up with Mr. Salmon, and we saw Mr. Ridgeway.

Q. Did you ever go there to talk about electrical appliances you could sell or to find any information that would help the construction company which you owned? A. I don't remember I made any business of it. I might have gone there once or twice.

Q. So you were interested in this thing before you went on the Commission? A. Yes.

Q. And quite considerably interested? A. I wouldn't say considerably.

Q. You had contracts with the Federal Signal Company? A. No, sir; never had any contracts with any company.

Q. What was the nature of your business with them? A. We might have sold them a few fuses or batteries.

Q. Sold them to them? A. Yes, at least I think we did. I don't remember now.

Q. If they had a contract for supplying the signals, would they then come in the market for products of your concern on account of the contract of supplying signals? A. They probably would send out inquiries to find out what they could buy the things.

Q. Just tell me. A. If they did it in the usual manner, they would send out inquiries to find out how they could buy these.

Q. I say, if they got a contract for signals, they would need some articles like you manufactured? A. That is what I have said.

Q. So when one of these signal companies got a contract, why then there would be an avenue on the market for the construction company's product, wouldn't it, if you could get it? A. Well, naturally the construction —

Q. Just answer me. A. Yes. If they wanted materials they would have to go to the manufacturer.

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Q. Whenever one of these signals to whom you could sell could get a contract for installing signals, why, it would interest you, wouldn't it? A. Probably, but they were not giving out any contracts in those days.

Q. Now, didn't you go to the Public Service Commission to get some information as to when some of these signal contracts might be let or to whom they might be let? A. Once, yes.

Q. And this was just within three or four months prior to your going on the Commission? A. No, sir; it was two years.

Q. Now, when you got on the Commission, you found after you had gotten on, this question came up in reference to the awarding of these signal contracts? A. Yes.

Q. And the Union Signal and the Federal and the General Signal Company were involved, were they not? A. And the Hall.

Q. And there was a question that had to be determined by the Commission, requiring the taking of some testimony, or a hearing, was there not? A. Yes.

Q. And you asked the Chairman to assign you to that hearing, did you not? A. I told the Chairman I knew something about it.

Q. Didn't you ask the Chairman to assign you to that hearing? A. I don't remember whether I did or not, but he did, anyhow.

Q. Will you answer that question? A. I don't remember.

Q. Now, Secretary Whitney testified on February 12th, before this committee:

> "As I said a moment ago, I either heard Commissioner Wood ask the Chairman to have this matter referred to him, or the Chairman told me that he had."

Now, after refreshing your recollection on the testimony, did you ask the Chairman — what do you say? A. I say I don't remember.

Examination by Mr. Feinberg:

Q. Didn't you say this morning in answer to a question that you were interested in these things, and it was your request to be appointed? A. No, sir, I never intended to say it.

Q. You never intended to? A. No.

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Q. Do you think Mr. Whitney testified to the truth, when he testified as I have just quoted? A. I don't remember.

Q. You wouldn't say he did not testify truthfully? A. I don't remember.

Q. Didn't you say you were studying electricity and such study led you to ask to be appointed? A. I looked into those things.

Examination by Chairman Thompson:

Q. He wants to know what you testified this morning. Tell him yes or no. A. I would rather look at the minutes to see what I testified.

Q. You can answer yes or no, or you don't remember. A. I don't remember.

Q. You don't want to testify that Mr. Whitney did not testify truthfully in that matter I quoted? A. No, I don't remember.

Q. Then you went on and got the assignment? A. It was assigned to me.

Q. And you proceeded to hear the case? A. Yes.

Q. And then you held the case quite a while? A. No, I did not. I did not hold the case a minute.

Q. How long did you have it before you? A. One day.

Q. Only one day? A. Yes.

Q. Tell me the date when it was assigned to you? A. Why it is here, the letter of Colonel Williams, enclosing the bid, came in June 15. That was referred —

Q. Don't tell me that. Tell me the date it was assigned to you. A. Well, the parties came in on the 20th. I suppose it was assigned to me about the 22d or 23d. I held a hearing on July 2d, and closed the hearing on that day.

Q. Then when did you report? A. When the letter of counsel came down, July 30th. We could not act before the letter of the counsel came down, and report of the chief engineer.

Q. Was the matter before you considerably more than one day? A. No, sir; it was not, because I closed the hearing on that day.

Q. You did not make any report to the rest of the Commission on that same day? A. Naturally not.

Q. Then you held the proceedings? A. How could I hold it? We cannot act before the report of the chief engineer and counsel

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came down. We acted on it the same day the report of the chief engineer and counsel came down.

Q. Do you think Commissioner Williams would testify falsely? A. No, sir; I do not.

Q. Commissioner Williams testified before this Committee on February 12th, 1915, as follows in answer to question:

> "Q. Can you tell us anything more than you have told us, Mr. Williams, about how this came to be assigned to Mr. Wood? A. No, I can't tell you anything about how it came to be assigned. I think Commissioner Wood might tell you perhaps.
>
> "Q. Probably he could. A. All I know is that it kept dragging along and dragging along."

A. Now, isn't the best answer to that the records of the Commission?

Q. Did Commissioner Williams testify falsely there? A. I think he was mistaken.

Q. Then he testified false, is that correct? A. I think he was mistaken.

Q. I want to know whether he testified false or true. A. I can tell you the facts.

Q. Just answer. He either testified false or he testified true. A. I don't think that is the fact.

Q. Then he testified falsely? A. I said I don't think it is the fact.

Q. Do you decline to answer the question? A. I will answer it that I do not think it is the fact.

Q. Answer yes or no, or tell me you decline to answer it that way. A. I decline to answer it that way, but I will say I do not think it is the fact.

Q. I think you have already testified in reference to your report — you say you did make a report? A. I made a report verbally to the meeting.

Q. Did Commissioner Williams hear your report? A. He heard; I don't always write the reports; I often make verbal reports.

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Q. Commissioner testified the same day:

"Q. Just a minute. It was assigned to him for — to report, wasn't it? A. Yes, sir. Q. And did he ever make a report? A. Not that I ever saw."

A. Of course, he never saw it; he heard it, though.

Q. He heard it, though? A. Yes.

Q. Then there was a record of it, if you ever made one verbally, there is a record of it? A. Possibly.

Q. I want the original record. A. I don't know whether there was any minutes taken of that meeting.

Q. Produce the original record of your report. A. If there were original minutes taken, I can; and if there were not, why, I can't show it to you.

Q. Now, I want to ask you again: Will you explain what Commissioner Williams meant when he testified before this Committee on the 12th of February:

"Q. Aside from the demand made by Brooklyn people, and aside from your desire to have the work expedited, what other reason did you have for taking this action that you did? A. I did not want to see any more fooling about it; the chief engineer and the counsel had recommended it. Q. Was it fooling, what do you mean by that? A. Well, I don't know as it was fooling, but I didn't want any more fooling about it. Q. What do you mean by fooling? A. I did not want any fooling of that kind about it."

He testified that he made the motion before the full Commission which forced the action on the matter that was before you? Now he testified, "Was it fooling, what do you mean by that?"

A. He said afterwards he did not mean that.

Q. "Q. Aside from the demand made by Brooklyn people and aside from your desire to have the work expedited, what other reason did you have for taking this action that you did? A. I didn't want to see any more fooling about. The chief engineer and the counsel had recommended it. Q. Was it

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fooling, what do you mean by that? A. Well, I don't know as it was fooling, but I did not want any more fooling about it. Q. What do you mean by fooling? A. I didn't want any more fooling of that kind about it. Now, what did he mean by that? A. I don't know what he meant, and I would say also,"—

he says in his testimony a little later on:

"Now, Colonel, I am not sure I made the motion to force it over to the other Commissioners, but whether the motion as it was finally adopted was on my motion or Commissioner Woods' or some one else, I would not be sure. I don't remember that. The record would show."

Q. He testified before this Committee that he forced action in this matter by bringing it up before the full Commission, and you had never reported before that? A. I could not report.

Q. Then you never had, had you? A. No, I hadn't.

Q. And that is why it was brought before the Board? A. No, it was not. It was put on the calendar.

Q. That is what brought it before the Board. Now, after that, then, a letting was had? A. No letting was had, no. The award was made.

Q. There is one other thing, and you can come back to-morrow and explain it, referring to the testimony before this Committee. Mr. Whitney testified that he did not like the looks of things. You have read that testimony taken before this Committee at that time? A. I have.

Q. Your attention was called to it at the time? A. My attention was not called to it, but I read the testimony.

Q. And you never have quarrelled with anybody about it? A. What good would it have done?

Q. I ask you if you have? A. I read the testimony afterwards; I did not read it at the time.

Q. I think it came down in answer to a question from me:

"Q. Mr. Secretary, you said you did not like the looks of things. Where did you get your presentation that you did

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not like the looks of things? A. In those things I enumerated. Q. Did you think there was something crooked going on; is that what you mean? A. Well, I thought it was just about time to terminate the situation and have that contract approved. Q. You had a hunch — you know what a hunch is? A. Perfectly well. Q. You had a hunch that there was something crooked somewhere? A. I won't make that admission. Q. Well, there was something that ought not to be? A. Something that ought not to be; yes, sir."

Q. What did Secretary Whitney mean by that? A. I don't know what he meant. He has no business for saying so. My answer to that is look at the records of these things. Everything has run along most expeditiously, and everything has been acted on almost immediately.

Q. You think Mr. Whitney and Mr. Williams entered a conspiracy to come before this Committee to put you in wrong? A. I think that testimony of Mr. Whitney is most misleading, to put it mildly.

Q. In other words, you think he perjured himself? A. He did not make any direct statements there. He was only trying to draw inferences.

Q. And they were not based on anything for which he could draw such inferences? A. No, sir.

Q. Have you ever made any demands of Mr. Whitney, that he correct his testimony? A. The testimony is all past and gone.

Q. Did you ever make any demand of Mr. Whitney that he correct his testimony? A. No, sir.

Q. Ever call his attention to it? A. No, sir.

Q. Ever make any complaint to anybody about how he testified? A. I don't remember whether I have or not.

Q. You knew when he gave this testimony that next day when he testified to it? A. No, I did not.

Q. You knew that he testified? A. I did, and I thought I answered it fully in my brief.

Q. You knew he testified, that was the next day after he did? A. I read it in the newspaper.

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Q. You never came back to the Committee to correct it? A. No, sir. I corrected it before the Governor.

Q. You think you did? A. Yes, I did.

Q. I think you will get a chance to correct it again up there, but I don't know. A. Senator, I would like to say that I held that hearing on July 2nd. The report of the chief engineer was—

Q. We know all that. A. I would like to make a statement, if I can.

Q. You can make the statement when we come back to-morrow morning.

Senator Lawson.— You said yesterday that one of your accounts was in the Commercial Trust Company of New Jersey?

Mr. Wood.— Yes.

Senator Lawson.— Is that Hoboken, N. J.?

Mr. Wood.— No, sir; Jersey City.

Senator Lawson.— Would you have any objections to producing before this committee of the Legislature your pass-book and check-books on that account to-morrow?

Mr. Wood.— I will get a transcript of them, yes.

Examination by Senator Lawson:

Q. Any objection to letting our accountant go through the account of the bank? A. No. You want it from May 19th?

Q. May 1st. A. I will see if I can get it.

Q. No objection to letting our accountant go over? A. From May 19th; that is the day I was appointed.

Q. You will give us permission to go to the banks? A. From May 19th.

Q. Yes. A. I will get the bank to prepare it for you. I want to put a statement on the record.

Chairman Thompson.— I wish you would have a statement in reference to this testimony of Mr. Whitney I have called your attention to, and testimony of Mr. Williams, because it is there,

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and I want to know what the facts are, because it is up to you to explain.

Mr. Wood.— I want to have a chance to explain.

Chairman Thompson.— Those people that are your associates, and they have made these things and put them on the record before this Commission, and I do not want you to make general assertions, but I want you to give us the facts. I may be all wrong.

Mr. Wood.— Have you a copy of that?

Mr. Thompson.— You have a copy of the record taken in these matters. You had your stenographers here, and they have all been read right in.

Mr. Wood.— This is not the minutes of this hearing.

Chairman Thompson.— That is the one I have called your attention to. Give us a detailed statement of this, because it should be cleared up.

Mr. Wood.— Well, I have given a detailed statement in my answer to the charges.

Chairman Thompson.— That is an entirely different matter and it is just the same as though you were on earth again now.

Mr. Wood.— All right.

Chairman Thompson.— We will be here at ten-thirty to-morrow morning.

Mr. Wood.— All right, I will be here, too. I will tell the bank to get you a transcript. It is pretty late to-day to do that.

Chairman Thompson.— We will suspend until ten-thirty to-morrow morning.

(Whereupon the Committee adjourned to December 2, 1915, at 10:30 A. M.)

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DECEMBER 2, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Meeting called to order at 10:30 A. M.

The Chairman.— The Committee will come to order. Mr. Auerbach appears here this morning, in response to a subpoena, and I will excuse Mr. Auerbach from appearance this morning, and ask him to appear before the Committee on Saturday morning, at 10:30, to which time we will adjourn when we adjourn to-day. So if you will appear at that time.

Mr. Auerbach.— Yes. I understand it will be inconvenient for you to put it over until Monday or Tuesday?

Chairman Thompson.— Yes.

Mr. Auerbach.— Now, Senator, do I understand you want to subpoena Mr. Renshaw?

Chairman Thompson.— If he likes.

Mr. Auerbach.— Is that the time you want him?

Chairman Thompson.— At 10:30 Saturday morning.

(To Commissioner Wood.) Now, Commissioner, unless you have got some statements that you want to make this morning, we won't have anything further to ask you to-day.

Mr. Wood.— I would like to reserve the statement, and have the opportunity to make it. I know you have been very kind and allowed me to do so.

Chairman Thompson.— I told you to make it this morning, if you liked.

Mr. Wood.— Yes. I would rather make it later.

Chairman Thompson.— Then there will be nothing further to-day from you.

(Recess.)

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AFTER RECESS

Chairman Thompson.— Then there is nothing to come before the Committee this morning. I want to also note the presence before the Committee to-day of Assemblyman Talmage. There is no need of waiting, because the records I have I won't do anything with them. The Committee will suspend until Saturday morning at 10 o'clock. We will call the Committee long enough to acknowledge the presence of Senator Joseph of New York, and then we will immediately adjourn to Saturday.

(Whereupon the Committee adjourned to meet on Saturday, December 4, at 10 A. M., at the same place.)

DECEMBER 4, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order at 12:15 o'clock P. M., Chairman Thompson presiding.

Quorum present.

Mr. Auerbach.— Mr. Renshaw, President of the Federal Signal Company, is here; not in obedience to a subpoena, however.

Chairman Thompson.— See that a subpoena is served upon him.

Mr. Lewis.— I will ask Mr. Auerbach to take the stand.

JOSEPH S. AUERBACH, being first duly sworn, testified as follows:

Examination by Mr. Lewis:

Q. You are an attorney at law? A. Yes.

Q. Of what firm? A. Davies, Auerbach and Cornell.

Q. Practicing in New York city? A. Yes.

Q. And was there a time when you represented the Federal Signal Company? A. Yes.

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Q. When was that? A. Some time the last year.

Q. The latter part of 1914? A. Yes.

Q. Was there a time when you appeared before the Public Service Commission of the First District, in connection with the award of the contract for the installation of signalling devices on the Fourth Avenue Tunnel? A. Yes.

Q. Brooklyn? A. Yes.

Q. And you appeared in behalf of the Federal Company at that time? A. Yes.

Q. Will you state the purpose of your appearance? A. To induce the Public Service Commission to recall its approval of a contract for installing signal devices on the Fourth Avenue Tunnel, and to inquire into the question of the letting of that contract.

Q. You understood, did you, that a contract had been awarded at that time to some other company? A. Yes.

Q. And what other company? A. The General Company.

Q. The General Railway Signal Company? A. That probably is the name of it.

Q. The Rochester Company? A. Yes.

Q. Did you understand whether or not that contract had at that time been signed by the Railway Company? A. I saw that Commissioner Williams said — I saw one of the clippings of the newspaper, Commissioner Williams said the contract had been signed at the time of the hearing. I am quite clear he was wrong about that. The contract will speak for itself. I am quite sure he is wrong about it.

Q. Do you remember the date of that hearing? A. It was the latter part of December, and my impression is the contract was not signed until some days after.

Mr. Lewis.— Did you see the contract, Mr. Renshaw, when we were in the other room?

Mr. Renshaw.— Yes, sir; but it was not dated.

Mr. Lewis.— Was it signed when you saw it; did it bear signatures?

Mr. Renshaw.— No, sir; the signatures were not on it.

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Q. What, if anything, was said, as you remember, on that subject, Mr. Auerbach, at that time, anything said on the subject as to whether or not the contract had been executed? A. Some one of the Commission, I recall, said the contract had been signed, and I said I was quite clear it had not been signed, and then we went on to a discussion of the propriety of the Commission opening this hearing with the object of sustaining by their approval or withdrawing it, as the case might be, after the testimony was developed.

Q. You were present after the discussion until the determination of the question? A. Yes, sir, by vote.

Mr. Lewis put in evidence minutes of the meeting of the Public Service Commission of the First District, dated December 22, 1914.

Mr. Auerbach.— May I look at the minutes after you look at them, and before you finish?

Mr. Lewis.— Yes, sir; you may look at them.

Q. I show the witness the minutes of the meeting of December 22d, as appearing in the file, Case No. 6695; are those the minutes of the meeting, Mr. Auerbach, at which you were present? A. Yes.

Mr. Lewis offered the minutes in evidence.

(The minutes were received.)

Q. At that meeting you stated that there were reasons which you did not care to give at that time, and which would be disclosed in the event of a reconsideration of the contract at a later meeting, did you not? A. The reason for testimony given — I don't know; probably. I don't know what the phraseology was that I used.

Chairman Thompson.— Just read that.

Mr. Auerbach.— My general recollection is I said I would establish to their general satisfaction if the approval were recalled.

Q. You said, "I don't think it is proper to state the ground. On the return of my client, we will have just as protracted a hearing as you can grant us;" do you recall that fact? A. Yes, sir.

Q. Are you willing to state at this time what the grounds were

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which you were unwilling to state at that time, or you thought it not proper to state at that time? A. Will you let me see —

(Minutes handed witness.)

Witness (continuing). I thought I could establish by testimony to the satisfaction of the Board or the Commission, that if they cared to encourage bidding, competitive bidding, and not discourage it, that this was one of those cases where they should recall their approval. My client had been the successful bidder to the amount of something over $400,000.

Q. Do you mean by that, the low bidder? A. Yes, sir, and the company that bid $400,000 below the one that got the contract.

Q. The company that bid — A. Had originally bid more than $400,000 higher, they got the contract. I thought I could establish to the satisfaction of the Commission, that some of the provisions of that contract, that new contract, which apparently might be the moving cause for the approval of the contract by the Commission, I won't say were not real, but were not capable of execution.

Q. That was one of the matters that you had in mind? A. Yes, sir. That was the speed control device.

Q. Did you at that meeting make any statement or say anything that could be construed as giving the impression that you had in your possession startling information? A. Oh, no. I didn't intend to give that impression. I see that one of the witnesses has said that I suggested I would startle the community. I want to say to you and the Commission that I never arrogated to myself the job of startling the community, and did not in this case, and all I hoped to do was represent my client's interest in securing a reopening of this subject under which I considered that they would deem it appropriate to at least have new competition or establish conditions under which the first lowest bidder should be entitled to the same consideration, not necessarily the successful award, not an award, but they should have the facts laid before the Commission. I thought it was a perfectly natural thing to ask. I had been with Mr. Renshaw on Sunday, but one day, I think, and on Monday at the conference it was interrupted from time to time, and I think I referred to it here to the Commission. Mr.

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Renshaw was going back and forth to the telephone and the end of these telephonic communications was that Mrs. Renshaw was dead, and it was sort of a tragedy, and he went away and this hearing was I think a day or two afterwards. I rather pleaded with the Commission to give me an opportunity for a further consultation with my client, under the circumstances. I think I did not decline absolutely to say what the grounds were, but gave as a reason for not stating the grounds, that I would like to have the benefit of a consultation with Mr. Renshaw.

Q. That was really your reason for not stating the grounds at that time, was it? A. Yes, sir, I am sure, without reading over, that I gave that.

Chairman Thompson.— Did you have this conversation with Williams that he testified he had with you?

Mr. Auerbach.— No, sir; I did not. Mr. Williams is mistaken about that. Here is something, if I may volunteer. Commissioner Maltbie says:

> "I agree with what the Chairman said precisely as he has expressed himself, and I think I appreciate Mr. Auerbach's difficulty of saying now, even if we gave him the opportunity to say all that he might say under the circumstances (that is, the death of Mrs. Renshaw). I don't for one moment imagine that he has got all the facts in the case at hand. We heard a great many of them, and it took us more than an hour to hear what we heard."

Q. You were unable at that time to make an argument before the Commission in support of your position, because of the interruption of your conference with your client? A. Yes, sir; you see, Senator, not only it involved the argument, but the taking of testimony.

Chairman Thompson.— Mr. Williams testified that you, Mr. Auerbach, came with the proposition:

> "Mr. Auerbach came to me, I was sitting in a case, and told me that he was going to move to reopen that case, and I said that was all right, there was an attorney who had

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appeared for it, and he said that he would ask to reopen that decision, ask to reopen it, and that he appeared for the Federal Signal Company. Q. Who had been the original low bidders? A. Yes, and he said that there were things in the case that would startle me if I knew them, and I asked him to tell me what they were, and he said he would rather not, and it was arranged he should come before the Commission and make his statement.";

was there any such conversation as that that you had with Mr. Williams — this was evidently private conversation before you appeared?

Mr. Auerbach.— He was sitting there and I asked him if he would be present at this hearing, and I don't think I used any such phraseology as "startling."

By Chairman Thompson:

Q. You do not care to deny Commissioner Williams' statement, however, I have read here? A. It is my recollection I did not use the word "startling" or its equivalent.

Q. Further:

"Q. But he didn't tell you anything there that would startle the community? A. No, sir. He promised to if we would reopen the case and let him have a hearing. Q. He said he would if you would dispose of it on some other grounds? A. He didn't say what,— where he would tell this startling information, or anything of that sort. Q. He said he had it? A. He said he had it. Q. And could tell it? A. Yes, sir. Q. Did you ever find out from any other source or in any other way what that information was? A. I was informed, but after I had made an inquiry, though. Q. What inquiries did you make? A. Yes, I did. Q. What did you find? A. I found this: I found that one of the men connected with the Federal Company previous to Commissioner Wood being appointed on the Commission, while Mr. Commissioner Wilcox was yet a Commissioner and Chairman of the Commission, that Commissioner Wood had sought employment or to be retained by this

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> Federal Company in their New York matters. And I told Commissioner Wood this and asked him about it, and he did admit,— I would rather you would ask Commissioner Wood about this, I wish you had asked him when he was here, he told me he did seek to be retained by the General Company, by the General Company, by the company that got this contract, the General Company. Q. That is the Rochester Company? A. The Rochester Company.";

and later he said in answer to a question from Assemblyman Knight:

> "Mr. Auerbach said to me afterward that there were two affidavits in existence that he relied on; I don't know whether he thought it was after Commissioner Wood was appointed to the Commission that he made these overtures, because he never,— the testimony, at least, of the whole thing was before Wood. By Colonel Hayward: Q. Did he tell you what was in the affidavits? A. No, I never heard. Q. He said the affidavits protected him in connection with the matter, he thought? A. No, I think Mr. Auerbach referred to the affidavits,— Mr. Auerbach said the affidavits protected him in making the statements he had made. That was after we had denied the motion to reopen the matter that Auerbach told me that.";

what do you say as to that? A. I do not recall that I talked with Commissioner Williams at all, after it was closed. I left the room and I don't think I saw Commissioner Williams after the vote.

Q. Do you desire to deny that Commissioner Williams' statement is correct? A. I do not want to deny anything that Commissioner Williams thinks he recollects, deny the correctness of it, except to say that I have no recollection of having talked to Mr. Williams at all after the vote was taken. I left the room and the meeting broke up, and I went my way, as I recall it.

Q. And you called me on the telephone and said you did not recollect anything about affidavits, and then I took this testimony and read it to Mr. Williams, and he reiterated that that was his recollection, and he also volunteered the information that when he

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gave this testimony he had looked it up, and his recollection was clearer when he gave it and was on the stand, and he stood for it? A. Did he testify to anything in addition to this?

Q. I don't remember that he did.

Mr. Smith.— For your own protection in this discussion, I would like to ask the question whether or not you have or ever had any affidavits in connection with this signal proposition that were presented to the Commission at this time in relation to the subject?

Mr. Auerbach.— No, sir.

Mr. Smith.— And particularly any affidavits to which Mr. Commissioner Williams might have referred in his testimony?

Mr. Auerbach.— No, sir; none whatever.

ALFRED H. RENSHAW, being first duly sworn, testified as follows:

Examination by Mr. Lewis:

Q. What is your business? A. I am an engineer and President of the Federal Signal Company.

Q. Of Albany? A. Of Albany, N. Y.

Q. And did that company compete for the contract for the installation of signaling devices or a signal device in December, 1914? A. It did.

Q. Or prior thereto? A. Yes, sir.

Q. Will you tell us what you recollect of the circumstances connected with a presentation of bids and the subsequent development? A. The Federal Signal Company at the time was executing a contract which it had secured for Center street loop signaling in the Spring of 1914, and was subsequently requested to put in a proposal for the signaling on the Fourth avenue and the subways in Brooklyn, and submitted a bid, I think, in about September or October, at a figure which was considerably lower than any other. It was about fourteen hundred thousand dollars; the Union Switch and Signal Company submitted a figure of about fifteen hundred and fifty thousand dollars, and the General Railway Signal Company of Rochester, a figure of something over eighteen hundred thousand dollars. The Hall Switch & Signal Company

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submitted a figure, I think, of about twenty-four hundred thousand dollars. At the time the bids were opened in the offices of the Brooklyn Rapid Transit and read off and made public, the president of the General Railway Signal Company made an announcement that his company possessed a scheme for signaling which would — which was very much superior to any of the standard systems, but that it had not been developed, and that he would like to make a proposal for installing that system. The system was never disclosed in detail, because I understood that it had not been developed or put in practice. The Brooklyn Rapid Transit Company began to consider the proposition and investigate it, and they asked us if we had a similar scheme, and we did submit a similar scheme, that is, a scheme so far as we understood it to be similar, for speed control, and the Brooklyn Rapid Transit Company also asked us to reduce our figure, our price, telling me that the General Railway Signal Company had reduced their price by about one hundred thousand dollars. I declined to reduce my price below the figures that I had submitted in competition, and finally the contract was awarded to the General Railway Signal Company at a meeting which occurred, I think, somewhere around the 18th of December, and subsequent to that date I secured the services of Mr. Auerbach, and he appeared at the meeting of December 23d or 24th, I think it was, something about that date, at which I was not present, and about which he has told you.

Q. Your understanding is that the contract had at that time been awarded to the General Railway Signal Company? A. No, sir; it was not my understanding that it had been awarded.

Q. Didn't you understand it had — A. It had not been signed.

Q. You understood it had been awarded by the General Municipal Railways Corporation, did you not? A. No, sir. The New York Municipal Railways Company had recommended to the Commission that they award the contract to the General Railway Signal Company, and the Commission had approved the recommendation of the company.

Q. Your understanding is the Commission had approved the recommendation; is that true? A. It is.

Chairman Thompson.— Was the contract signed at that time, or not?

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Mr. Renshaw.— Its date is subsequent to that, I am quite sure. I cannot give the exact date, although I had it, but it was not signed, I think, for one or two weeks after this, because the contract had to be rewritten to cover the contingency of the installation of this hypothetical device that they had submitted, in the event of its being approved at some subsequent date by the Public Service Commission and the railroad company.

By Mr. Lewis:

Q. What had become of the Union Company's bid in the meantime? A. Well, at several hearings that were held, they took the ground that if the contract was not to be let upon the specifications that had been bid upon, that all the bids should be thrown out and new bids asked for.

Q. But your bid was actually the lowest bid presented, was it? A. Very considerably.

Q. How much below the bid of the General Railway Signal Company? A. Over four hundred thousand dollars.

Q. And do you understand that the contract as finally awarded, was awarded to the high bidder, that is, the next high bidder of them all? A. Yes, and at a price about one hundred thousand dollars lower than my bid.

Q. Reduced by mutual agreement between the company and the bidding company, is that true? A. Yes, sir.

Q. The railroad company and the bidding company? A. Yes, sir.

Q. Without any additional letting or advertising or soliciting public competition? A. Yes, sir.

Chairman Thompson.— You were willing to go into a new competition, were you, if the bids were rejected?

Mr. Renshaw.— I probably should; the matter never came up.

Chairman Thompson.— That is what you demanded, a new letting?

Mr. Renshaw.— Well, if they did not give it to us, they should re-let it.

Chairman Thompson.— That was your position?

Mr. Renshaw.— Yes, sir.

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Chairman Thompson.— They had no right to give it to the other company unless they gave you a chance to bid?

Mr. Renshaw.— Yes, sir, on new specifications, and the specifications submitted to the General Railway Signal Company were never exposed.

By Chairman Thompson:

Q. They changed the specifications when they changed the price? A. Yes.

By Mr. Lewis:

Q. What was your understanding of the contract price at which the contract was finally awarded? A. I think about twelve hundred and ninety-five thousand dollars. It is approximately that figure, with an additional provision for a certain amount for the equipment of the cars which would be required in case of the adoption of the hypothetical scheme which price I understood and I think is seventy-five dollars per car.

Q. Can you tell us what the so-called hypothetical device was, and what it was intended to accomplish? A. As I understood it, and understand now, it never has been disclosed, even to-day, as far as I know. It was a scheme for the speed control of the trains, adding no additional safety to the signaling system, but which might possibly enable the railroad company to close up the trains more than with the standard systems of signaling.

Q. That is, with a shorter headway? A. Yes, sir, a shorter headway, shorter distance between trains.

Q. Have you any knowledge as to whether any such device has been installed by the Railroad Company? A. I have no knowledge that it has been installed.

By Chairman Thompson:

Q. What is the fact, has it been installed? A. I don't think so. I cannot state positively. It can be easily ascertained, I think.

Q. You would know if the scheme was ever tested and became a practical thing, you would know, in your opinion, wouldn't you? A. I think so.

Q. Did you ever hear of the scheme being practical? A. No, sir.

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Q. What is your judgment about it? A. I don't think it is practical.

Senator Foley.— How about the rest of the specifications, do you know as to the performance of the specification which you bid upon, the successful company?

Mr. Renshaw.— I understand the work is being installed in accordance with the specifications upon which we bid.

Examination by Mr. Lewis:

Q. The net result is that a system was adopted at a cost below which you were prepared to furnish a similar system, is it not? A. The bids were upon the unit price basis, that is, so much for certain functions, and whether they are being put in at the same price, I don't know.

Q. Have you any reason to suppose that they are not? A. I have no knowledge, and I couldn't say that they are being installed at that price.

Q. What would be the probable increase in the cost in the event of the use of the hypothetical device at seventy-five dollars per car? A. I understand that, and I have been told, that the Brooklyn Rapid Transit have about sixteen hundred cars, and it would be seventy-five times sixteen hundred.

Q. Do you know whether arrangement has been entered into between the Railway Company and the General Railway Signal Company for the confirmation of the deal for the hypothetical device? A. I do not.

Q. It is your understanding that the contract price, the price at which the contract was finally awarded, is approximately a hundred thousand dollars less than your price, exclusive of the cost of the speed control? A. Exactly.

Chairman Thompson.—He says the specifications were changed.

Mr. Renshaw.— They were the same, plus the provision for the contingency. They were the same specifications.

Chairman Thompson.— I asked you the question whether they were the same specifications that your contract was let on, and you said no, they were different specifications?

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Mr. Renshaw.— The specifications were changed to provide for the adoption of the hypothetical device.

Chairman Thompson.— Were the specifications for the work that has actually been done, were they different than your specifications? A. No, sir, in case the standard system of signaling was installed, the specifications were the same, and I understand that is all they have put in so far, and all the work that has been done is done under those specifications which are identical with the ones upon which I have bid.

Chairman Thompson.— It has been said that nothing has been done toward the installation of the hypothetical scheme.

Mr. Renshaw.— That is what I have been told. Do I make it plain?

Mr. Lewis.— Yes, sir.

Senator Foley.— Did you make any offer to perform the specifications at the price the General Railway Signal got the contract for finally; in other words, did you offer to reduce your bid after the formal bids had been opened?

Mr. Renshaw.— I did, at the suggestion of the president of the Brooklyn Rapid Transit, and offered to take off fifty thousand dollars from my price, if he would give me the contract, and that was still fifty thousand dollars too high.

Mr. Smith.— Was this hypothetical device under a patent so that it was beyond the control of other bidders? This particular proposition?

Mr. Renshaw.— It was so claimed.

Mr. Smith.— This proposed additional device was under patent and beyond the control of any other bidders?

Mr. Renshaw.— It was claimed that it was; but since it has not been disclosed, nobody can tell.

Mr. Smith.— That was the claim made at the time?

Mr. Renshaw.— Yes, sir.

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By Chairman Thompson:

Q. Who are the stockholders of your concern, the principal stockholders? A. I am the largest, Mr. R. C. Pruyn, of Albany, is the next largest, I think. Mr. James H. Coldwell, of Troy, Mr. A. Veghte of Albany, Mr. John T. Cade, vice-president of the company. Those are the principal stockholders, as I recall.

Q. In the early summer you got the bids for construction of your signaling device in the Center street loop? A. Yes, sir.

Q. You were the low bidder there? A. Yes, sir.

Q. Who was the next low to you there? A. Union Switch and Signal Company.

Q. Where are they located? A. Pittsburgh, Pennsylvania.

Q. Did you have any conversation with Mr. Wood at that time at all? A. No, sir; I did not know him, and never saw him except at a hearing which he held at the request of the Union Switch and Signal Company, to protest against the award of the Center street loop contract to us.

Q. On what grounds was that protest? A. That we did not control the patents which would have to be used in the Center street loop. We offered to give bonds to cover, and we did give a bond for ten times what the contract called for.

Q. Was there a complaint in reference to holding up that contract towards the last — did you make complaint on account of holding up that contract toward the last? A. Yes, sir, because it was held up.

Q. Who did you complain to? A. Do you mean the Public Service Commission?

Q. Yes. A. I don't think I knew any of the Commissioners at that time.

Q. Who acted for you at that time? A. My dealings were altogether with the railroad company at that time.

Q. Where does Mr. Cade live? A. He lives at Arcola, New Jersey.

Q. Did he ever report any conversation he ever had with Mr. Wood in reference to the matter, in reference to that fact? A. I think not, I think he had met Mr. Wood subsequent to that time, but not at that time.

Q. You got your contract about the latter part of July? A. It

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was signed the latter part of July, but I think we started on it before that.

Q. When was your bid submitted? A. I think in April or May.

JOSEPH S. AUERBACH, being recalled for further examination, testified as follows:

By Chairman Thompson:

Q. Mr. Auerbach, how did you happen to become connected with this Federal Signal Company? A. I was retained by Mr. Renshaw.

Q. Who introduced you? A. Well, I think, Senator, I think, I do not wish to go into questions of communications of my clients. There is no reason, but I had rather not give it.

Q. Does your concern act as general counsel for the Interborough or its officers? A. No, sir.

Q. Mr. Belmont? A. I represent Mr. Belmont, and on occasion I represent the Interborough. Mr. Belmont is an old friend of mine, and I am one of his counsel.

Mr. Lewis.— I offer in evidence page 34 of the annual report of the Brooklyn Union Gas Company to the Public Service Commission for the First District of the State of New York, for the year ending December 31, 1909, headed, "Analysis of other additions to surplus account for year ending December 31, 1909."

As this report is an original record of the Commission, and should not be retained from the office of the Commission, I will read into the record the contents of this analysis:

CREDITS

For credit received from Standard Oil Company to make the price of 28 degree and 29 degree gas oil .03 per gallon instead of .0429 as billed and paid for from March 11, 1908, to December 31, 1908	$445,279 63
For credit received from Standard Oil Company to make the price of 34 degree gas oil .03375 per gallon, instead of .04875, as billed and paid for	3,395 28
Total	$448,674 91

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Less for quantity of 28 degree gas oil on hand December 31, 1908, reduced to .03 per gallon instead of .0429 as inventoried. This entry was made in order to charge cost of production in 1909 with gas oil at the reduced price, namely .03 per gallon.....		$35,799 35
Remainder (carried to the left).....		$412,875 56
For cash received from Standard Oil Company in consequence of Standard Oil Company having delivered a lower grade of oil during 1904 than that called for in the contract.		289,281 46
For profit on the Brooklyn Union Gas Company Consolidated Mortgage bonds sold to the National City Bank.....		29,506 75
For cash received from the city of New York for interest on deferred payment upon public lighting prior to 1909.....		9,535 64
For value of materials and supplies recovered in removing meters, etc., the above material having been charged to operating account...		33,022 20
For materials and supplies on hand December 31, 1908, but not included in inventory of that date. This difference was disclosed when inventory was taken September 30, 1909		12,668 07
For credit received from the State of New York for revision of gross earnings tax from 1899 to 1906, inclusive.....		$94,728 89
Less the following deductions:		
Amount paid to Frank White for legal services in connection with the above.....	$33,801 65	
Amount paid to Dudley Britton, in connection with above....	500 00	
Amount paid to Dykeman, Orland & Kuhn.....	250 00	

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Amount paid to Dykeman, Orland & Kuhn, for services in 1905 tax	$3,072 87	
Interest paid State	1,256 54	
Total deductions		$38,881 06
Balance remaining from the $94,728.89, carried to the right		$55,847 83
Sale of scrap iron		2,452 75
Adjustment of sundry consumers' ledger		1 01
Total		$845,191 27

Chairman Thompson.— That is their annual report for the year 1909, their original document.

(For tabulated copy of the foregoing statement, reference is hereby made to Vol. 4 of the 1910 report of the Public Service Commission for the First District of the State of New York, pp. 466 and 467.)

Chairman Thompson.—Assemblyman Polhemus is here and has a request to make of the Committee.

Assemblyman Polhemus.— I understand it is the purpose of this Committee to submit various recommendations to the Legislature next year, with a view of recommending changes in the Public Service Commissions Law. If that is so, I would like to arrange a public hearing for some of the residents of Queens County who have various amendments to that law they would like to suggest, and take it up with this Committee. The Queensborough Chamber of Commerce and Jamaica City Organization and other associations there desire this opportunity afforded them.

Chairman Thompson.— We will let this matter of Assemblyman Polhemus' stand until next Monday, and we will now take an adjournment until next Monday at 11 o'clock.

(Whereupon at 1:20 o'clock P. M., an adjournment was taken to Monday, December 6, 1915, at 11 o'clock A. M.)

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DECEMBER 6, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,

165 Broadway, New York City

The Committee met pursuant to adjournment, at 11 o'clock A. M., Chairman Thompson presiding.

Quorum present.

There being no business to come before the Committee at the time it was called to order, a recess was taken until 2 o'clock P. M.

AFTERNOON SESSION

Chairman Thompson called the meeting to order at 2 o'clock P. M.

Chairman Thompson.— A subpoena has been issued by the Committee directed to the Title Guarantee and Trust Company, directing them to bring certain books and documents, as follows:

Deposit ledger or ledgers from January 1, 1912, to date; deposit tickets, cancelled checks, if any, loan ledgers, loan registers, or loan cards, and all of the correspondence pertaining to the business relations which your banking institution has had with Hon. George V. S. Williams, Public Service Commissioner, State of New York, First District. I understand a representative of the Title Guarantee and Trust Company is present.

MR. CLINTON D. BURDICK appeared before the Committee and made the following statement: I am third vice-president of the Title Guarantee and Trust Company. We have no cancelled checks, because the account has been closed, and they have been returned. Loan ledgers, loan registers, or loan cards. We never made any loan to Mr. Williams, so I cannot possibly show anything in relation to it; we never made him any loan.

Chairman Thompson.— What is the objection to showing them, then?

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Mr. Burdick.— None at all. We have never made him a loan during the three or four years.

Senator Lawson.— Would they show if he made an application for a loan?

Mr. Burdick.— We have them outside, and I don't know if they would show if an application was made. He would go to an officer and ask for a loan, and go to a committee; otherwise it would not show on the cards. I looked through our correspondence, and we have none of any kind, no letter of any kind. As to the rest, we have them here.

Chairman Thompson.— Will you turn them over to Mr. Morse — is there any particular reason why you wish to turn them over here and do not think it would be better for him to examine them down at your institution?

Mr. Burdick.— There would be no objection to that.

Chairman Thompson.— I will state that this subpoena was served last week, and the Title Guarantee and Trust Company have treated this Committee very courteously in reference to it. They consulted their counsel, who happened to be, in the last analysis, Judge Cullen, ex-judge of the Court of Appeals, and he advised the Chairman of this Committee that he had advised his client that we were entitled to these books, but asked that the company be given time to notify Mr. Williams that they were going to produce them. The time was given to to-day. The Committee feel, I don't know as I want to say grateful for producing what we are entitled to, but we are glad to meet people who recognize what a situation is, and we are much obliged for your having brought the books here, and if you will take them back and take Mr. Morse's representative with you, he can go through them down there.

Mr. Burdick.— Very well.

Mr. Morse.— Mr. Dykman, of the firm of Cullen & Dykman, said he had advised his client to show us the books, and he wanted us to be perfectly satisfied and to state to him when we got through the examination if we had gotten everything we wanted, and that

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was their attitude toward the Committee, and he wanted the Committee perfectly satisfied.

Chairman Thompson.— The Chairman of the Committee has understood that attitude from the beginning. We respect your attitude very, very much.

Assemblyman Polhemus.— I have communicated with the associations I named Saturday, and they tell me that Wednesday would be all right for them, but their intention was not to have a public hearing in Jamaica. If the Committee were willing to come out there, they would be very glad to have them, because they think an inspection of the situation would be profitable.

Chairman Thompson.— We have so much to do, I think we had better fix the hearing here, and you had better notify your people that we will hear them here Wednesday. We will fix Wednesday, and will be very glad to greet your folks, if they will come in at that time.

A subpoena has been issued for Mr. Isaacson, of the B. R. T., and has not been returned yet.

A subpoena has been issued this morning also for another gentleman who does not happen to be in New York to-day, but who will be to-morrow or next day, and I would like Mr. Cole to be called up, and we will take a little recess for a few minutes, pending his arrival.

ASHLEY T. COLE, being first duly sworn, testified as follows:

Examination by Chairman Thompson:

Q. What we wanted to know about, you were interested or appeared in a proceeding, in the rate proceeding of the Kings County Lighting Company before the Public Service Commission, and the record shows that you were asked to produce certain books, and records, of the Kings County Lighting Company, which you had in your custody at one time when you were secretary of the company, and you appeared before the Public Service Commission, so the record shows, and stated that you had three packages of books, that one of the packages might be of use to the Committee, but two of the other packages you did not think would be of any

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use to the Commission, and that practically is what the record shows, and I want to refresh your recollection, and ask if you recollect that? A. If I said books, I think that is erroneous. We have our office file, having to do with our relations with that company, and that is all we have.

Q. Do you remember the statement you had three packages of papers, or something of that sort? A. No, sir; I don't. I haven't seen the testimony since I gave it. If you can, read it to me. It may be that there was a specific inquiry made and I said I had three bundles of papers which related to that subject matter in the office.

Q. That related to the old records back of a certain date? A. If you tell me what records you want, I will try and find them, and I will say we have none of the original papers or records of the books of the company. We have copies of contract of the town of New Utrecht.

Q. I would like the papers you did produce and also the two packages of papers you did not produce. A. Can I have access to that testimony?

Miss Loeb.— It is referred to at page 1240 of the record, and also on that page Mr. Cole testified that he had received from the city $40,000 for opening streets.

Mr. Cole.— I can state easily what that proposition is. Proceedings were brought by the city of New York to open the streets of New York in the neighborhood of the Holder station, in the neighborhood of Sixty-fifth street and Ninth avenue, and the Kings County Illuminating Company passed into the Kings County Lighting Company, and when the awards were ready for payment at that time, I happened to be secretary of the new company, and they needed my signature, together with that of the new president, for the receipt of the $40,000. That is the only one I have in my mind. I should suggest that can readily be found out from the Finance Department from somebody that is more interested in it than I am. I simply appeared as counsel in that matter.

Chairman Thompson.— Inasmuch as the record shows that these papers so mentioned were last in your possession, so far as the Public Service record shows, I am going to call on you to let us know and produce them.

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Mr. Cole.— I will produce them if I have them in my possession.

Miss Loeb.— There are three bundles, you stated, and you said you had examined into the other two bundles, and you did not feel that they contained what the Public Service Commission wanted, and I think there might be something there to show how this company started.

Chairman Thompson.— How long before you can let us know about it?

Mr. Cole.—As soon as I return to the office and get a look at the index cards and can find out.

ROBERT C. WOOD, being recalled for further examination, testified as follows:

Examination by Chairman Thompson:

Q. Mr. Wood, I wanted to call your attention to your testimony that you have already given in relation to the Union Switch and Signal Company, and I think you said you had seen some officer of that company whose name you mentioned? A. I said the Federal, as I remember it.

Q. Who was that? A. Why, when — I think it was Mr. Kay.

Q. But you also testified something in relation to transactions with the Union? A. I said, as I remember it, we had had transactions with all of them.

Q. What was the nature of those transactions, tell me again? A. Why —

Q. Our testimony has not been extended from the other day. A. There were connectors and primary batteries.

Q. And no other transactions? A. No, sir; not as I remember it.

Q. Just the sale of those connectors and primary batteries and fuses? A. As I remember it, yes, sir.

Q. You had no other business relation with them, except to sell them these articles? A. That is all, as I remember it.

Q. How much in money, during a year, would the sale of those articles amount to? A. Well, I don't remember now. They did not run up to any large figures.

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Q. What do you mean by a large figure? A. They might have run up to a thousand dollars or twelve hundred dollars, or perhaps more.

Q. That is with all the companies? A. Well, scattered around.

Q. Would you say you did a thousand dollars a year with the Union Signal Company? A. I wouldn't say without looking the thing up.

Q. And that is all the transactions you ever had with them? A. That is all I remember, yes.

Q. I want to refresh your recollection a little; didn't you go to the Union Signal Company and give them information in reference to where they could get a signal contract? A. I might have done so.

Q. Didn't you do so? A. Now that you speak of it, I think I did, yes, sir.

Q. Now, you remember that? A. Well, yes.

Q. And you gave them that information for pay, didn't you? A. No, sir, not for pay — I got pay afterwards, but I didn't give them the information for pay.

Q. Got what afterwards? A. Got pay for it afterwards.

Q. You recollect that transaction now quite fully? A. That was right in line with what I told you.

Q. And where was that contract that you got for them? A. Never had a contract.

Q. What did you do about it? A. What did I do?

Q. Yes, what did you do that they paid you for? A. I tried to get them a — this system installed, and if I got it installed, I expected they would pay me for it, or put in some of the appliances that we had.

Q. Where was the system to be installed? A. Down outside of Kansas City.

Q. And did they get the work? A. I believe they did, yes, sir.

Q. Did you have anything to do with getting it? A. I spoke to the people who were interested in it.

Q. Who was that? A. I think it was the Tucker-Anthony Company of Boston.

Q. Wasn't the whole matter done down here at the National City Bank? A. I don't know where it was done. I believe they had some conferences there.

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Q. You were not there when the contract was made, and you did not participate in it, did you? A. I think I went down there once, but I didn't see the people, and I wasn't there when the contract was made.

Senator Foley.— What was the date of that contract?

Commissioner Wood.— It was six months before I went on the Commission.

Q. All you did do was to call the attention of an officer of the Union Signal Company to this contract, wasn't it, the fact that this work could be obtained? A. Yes, sir, and I saw Tucker — Anthony also.

Q. What did you say to them when you saw them? A. I said I thought the Union Switch had a good facility for turning out the equipment, and I tried to get it for them.

Q. And what did he tell you? A. He said he would look into it.

Q. What else did you do about it? A. Why, I think when the general manager of the road came on here, I spoke to him about it, too.

Q. General manager of what road? A. Of the Kansas City Road.

Q. What was the name of the railroad? A. Kansas City, Clay County and St. Joseph.

Q. And he came on to New York? A. Yes, sir.

Q. What did you say to him? A. I told him I thought the Union Switch had good facilities for turning out this apparatus.

Q. Did you tell him they had the best facilities? A. I told him about them, but I don't remember the exact words I used.

Q. Did you make any special inducements to him to buy the Union Signal as against any other signal concern? A. No, sir.

Q. No special inducements? A. No, sir.

Q. Then how did your action have any effect in their getting the contract? A. I don't know beyond the fact I told him I thought they had very good facilities and the engineers for the Union had been to Kansas City also to see him.

Q. You made no special inducements to the president of the road or the people in Boston that would lead them to take the Union Signal over any other signal? A. No, sir.

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Q. What did you really do toward getting the contract for the Union Signal Company?

Senator Foley.— What has that to do with this investigation?

Chairman Thompson.—Are you asking me or Mr. Wood?

Senator Foley.— I am asking you.

Chairman Thompson.— I am not a witness. You might ask Mr. Wood.

Senator Foley.— I mean anything antedating his appointment.

Chairman Thompson.—Are you kicking about the Bankers' Trust Company, too?

Senator Foley.— I am not kicking about anything, but wondering whether we are pursuing the investigation or wandering all over the United States out in Kansas.

A. I saw him six months before I went on the Commission.

Q. Who? A. Mr. Morgan.

Q. Who is he? A. General manager of the road.

Q. What did you say to him? A. I called his attention to the Union Switch.

Q. Did you offer any special inducements to him in favor of the Union Signal Company over any other company? A. No, sir; the Union Switch did that themselves.

Q. What did you do to obtain this contract for the Union Signal Company? A. I knew — I don't know whether the president of the road was the active director in it, and I told him I thought the Union Switch had very good facilities for making or manufacturing signal appliances, and he said he would like to look into it, and I sent the Union Switch people to him.

Q. And that is all you did in it? A. Yes, sir.

Q. And after that they paid you? A. Yes, sir.

Q. How much did they pay you? A. As I remember it, fifteen hundred dollars.

Q. And do you recollect that you told me you could not recollect that when you were on the stand the other day? A. I told you we done business with all of them.

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Q. Were you free with your information when you told me that business was only connected with your sale? A. That is what I thought it would be.

Q. Who did you have your talks with, of the Union Signal Company? A. I think I saw Mr. Johnson.

Q. That is the first time you have mentioned Mr. Johnson's name? A. If you had asked me about him, I would have mentioned him.

Q. Where does Mr. Johnson live? A. I don't know.

Q. Where did he live at this time? A. I don't know.

Q. Did he live in Rahway, New Jersey? A. I don't know.

Q. Did you go there to see him? A. I never did.

Q. Where did you see him? A. In his office.

Q. Where? A. 30 Church street, New York.

Q. How many times did you see him there? A. Possibly three or four.

Q. You were pretty well acquainted with Johnson, weren't you? A. No, sir, not very.

Q. Weren't you? A. No, sir; I wasn't.

Q. Do you know what became of him or where he is now? A. I saw in the, I think, in the Street Railway Journal, that he was with the General.

Q. At Rochester, New York? A. I suppose he is in Rochester.

Q. His name is Sydney J. Johnson, isn't it? A. I believe that is his name.

Q. After you were made a Public Service Commissioner, did you see Mr. Johnson? A. He came up with Mr. Cruse to see me.

Q. Who is Mr. Cruse? A. Attorney of the Union.

Q. He came to see you where? A. The Public Service Commission office, in relation to this hearing.

Q. That is after the time the Union Signal Company had bid for the signal system in the Center street loop? A. Yes, sir.

Q. And the Federal Company also had a bid? A. That is right

Q. And they came and saw you where? A. Came and saw me in the office.

Q. Of the Public Service Commission? A. Yes, sir.

Q. Who was present? A. I think Mr. Butler came down.

Q. Who is he? A. One of our assistant counsel, and we were talking about the patents.

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Q. Did you see Mr. Johnson after you went on the Public Service Commission at any other time? A. I think I saw him once or twice, yes.

Q. Where? A. He came up to the office.

Q. You say once or twice? A. Yes, sir.

Q. Didn't you see him more than twice? A. I don't think so.

Q. Will you swear you did not? A. No, I won't. I don't think it was more than once or twice.

Q. Didn't you see him more than five times? A. No, sir; I don't think I did.

Q. Will you swear you did not? A. To the best of my recollection I did not.

Q. Will you swear absolutely you did not? A. I will swear to the best of my recollection I did not.

Q. I ask you if you will swear that you did not see him more than five times? A. I don't think I did. I won't swear to that.

Q. Will you swear absolutely that you did not see him over ten times after you went on the Public Service Commission? A. Yes, sir; I will swear to that.

Q. These times you saw him were while this matter was pending before you in relation to the interference of the protest of the Union Signal Company against the Federal Company? A. I also saw any one else who called in relation to it. I saw the Federal people and him and anybody who wanted to see me in regard to it.

Q. Mr. Wood, you must remember that you were very dense about these things the other day. A. No, sir; not at all.

Q. You don't recollect that? A. No, sir; I told you everything you asked me.

Q. Do you remember when Mr. Johnson severed his relations with the Union Company? A. No, sir.

Q. You remember that he did, do you? A. I saw in the paper he did. I haven't seen him since.

Q. Wasn't it a fact he was discharged by the Union Signal Company in July, 1914? A. I don't remember that.

Q. You don't remember about that? A. No, sir; all I know I read in the paper, and I haven't seen him since that time.

Senator Lawson.— Which company was he interceding for when he called?

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Mr. Wood.—He represented the Union.

Senator Lawson.—At that time?

Mr. Wood.— Yes, sir.

Senator Lawson.—And not the Federal?

Mr. Wood.— No, sir, not the Federal.

Q. What did he talk about when he came up there? A. He talked about the patents, was all.

Q. Didn't he ask you to arrange to award this contract finally to the Union Signal Company? A. He said they were going to make a patent fight, and he didn't think the Federal had the patents and they were going to fight them.

Q. You felt friendly to him, didn't you? A. Not any more than any one else.

Q. Wasn't he the man that made the settlement for fifteen hundred dollars for the previous service you testified to? A. No, sir; the president.

Q. Who was he? A. Colonel Prout.

Q. Where does he live? A. I don't know.

Q. He was also discharged, wasn't he? A. I read in the paper he left. I don't know whether he was discharged or not.

Q. That was the same time Johnson left, was it not, the same day? A. I don't know.

Q. You understood Prout and Johnson went out at the same time? A. I read that in the papers, yes.

Q. Now, when do you say that was? A. It was in July, I presume it was.

Q. About the 15th of July? A. Well, I have no recollection of that. I don't know.

Q. Your talks in relation to this matter have been had with Prout and Johnson, both, haven't they? A. You mean the application of the Union against the Federal?

Q. Yes. A. I don't remember whether Prout came up or not. Johnson and Cruse did.

Q. You saw Johnson and you saw Prout, too, didn't you? A. I don't remember whether I saw Prout or not, but as I said before. Johnson and Cruse came up.

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Q. Wasn't it Johnson that you negotiated that pay for getting this contract with? A. I saw Johnson and Prout.

Q. You asked for more money than that, didn't you? A. I don't remember whether I did or not.

Q. Didn't you ask for five thousand dollars? A. I don't remember that.

Q. Just recollect and see. A. I don't remember that.

Q. But you got fifteen hundred dollars? A. As I remember now.

Q. Paid to you in cash? A. No, sir, paid by check.

Q. Well, that is the same thing; you had not done anything for that fifteen hundred dollars except to call their attention to the Kansas City Road and to speak to the men you told them about? A. Yes, I told them I thought they had very good facilities for manufacturing the signal appliances.

Senator Lawson.— What was the amount of the contract between the Union Company and the Kansas Railroad?

Commissioner Wood.— I am only talking from memory, but I think somewhere around sixty-five or seventy thousand dollars; about seventy thousand dollars, I think.

Senator Lawson.— I hand you Exhibit A, which is a transcript of your account with the Lawyers' Title and Trust Company, and I ask you to turn to item similar to June 20th that is checked there, which is a withdrawal of $451, and just run down through and you will notice there after every deposit of $625 you have a withdrawal of $450 to $452; that is, $450.

Commissioner Wood.— Yes, sir.

Senator Lawson.— Were those items deposited in any other bank besides the banks you have given us a list of?

Commissioner Wood.— No, sir; those items were, as I remember, paid to my brother.

Senator Lawson.— Paid to your brother?

Commissioner Wood.— Yes, sir.

Senator Lawson.—And not deposited by you?

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Commissioner Wood.— No, sir.

Senator Lawson.— You notice that prevails throughout the entire account?

Commissioner Wood.— Yes, sir. That is for money that he had advanced me. That was money he had advanced and my uncle and brother-in-law had advanced.

Senator Lawson.—And the four banks that you have given, the Lawyers' Title and Trust Company of New York, the Central Trust Company of New York, the Twenty-third Ward Bank of New York, and the Commercial Trust Company of Jersey City, are the only banks that you do business with?

Commissioner Wood.— Yes, sir.

Senator Lawson.—And have done business with since May 19, 1914?

Commissioner Wood.— Yes, sir.

I would like to say, Senator, that that transaction of mine with the Union, when I saw Mr. Morgan, the general manager of that, that was six months before I went on the Commission.

Chairman Thompson.— You have already testified to that.

Commissioner Wood.— I would like also to call your attention to the fact that this contract, that the records of the Commission show that on June 17th, at a meeting of the Commission, this matter was referred to the chief engineer and counsel of the Commission for report, and on June 20th a protest was received from the Union Switch and Signal Company against the Federal Company, and that was referred to me.

Q. You remember your asking for it now, don't you? A. What is that?

Q. You asked to have it referred to you, didn't you? A. I don't remember asking to have it referred to me.

Q. Will you say you did not? A. I say I don't remember. I remember I was in the Chairman's room and he said he had it there, and he was reading it.

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Q. I believe I called your attention to the fact that Travis Whitney said you asked for it? A. I think he said he didn't know.

Q. He swore he heard you ask him for it when the Chairman said he had it. A. He said he didn't remember whether I asked for it or not, as I remember. On July 2d I want to say that I held a public hearing which was announced in the regular manner upon the calendar of the Commission and designated Rapid Transit No. 6695. The minutes show that Chief Engineer Craven, Howard A. Butler, assistant counsel to the Commission; Daniel L. Turner, deputy engineer of subway construction; Clifton W. Wilder, electrical engineer, and George Gibbs, of Gibbs & Hill, consulting engineers of the Commission, were also present and joined in the hearing. The minutes further show that, at the close of the hearing, in reply to the inquiry of Commissioner Wood as to whether either counsel desired to present further testimony:

> "Mr. Cruse (counsel of Union Switch and Signal Company): I do not wish anything further. Mr. Eyre (counsel of Federal Company): I should like to ask that the hearing be postponed for a few days until I can decide whether we shall hear experts on our side. I do not think I will. I would like to leave it that way. Commissioner Wood: You can advise the Commission and they can decide. Mr. Eyre: I will advise the Commission whether I will ask for another hearing. I do not think I will. Commissioner Wood: I would like to get this matter closed up as soon as possible. Mr. Eyre: I can advise you this afternoon. Commissioner Wood: Within a day or two. There is nothing further, then, gentlemen. I understand I am going to hear from Mr. Eyre as to whether he wants to put experts on the stand. You will notify me by Monday, will you not? Mr. Eyre: I will notify you this afternoon. (Whereupon, at 11:55 A. M., the hearing was adjourned subject to call.)
>
> "On July 2d Commissioner Wood received a letter from Messrs. Kenyon & Kenyon, counsel for the Federal Signal Company, saying that, 'In accordance with our promise made at the hearing to-day in the matter of the protest of the Union

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Switch and Signal Company in regard to the award of signaling on the Center street loop, we beg to say that we will not desire any further hearing on this matter.'

"The hearing was therefore closed."

Then, "under date of July 20th, Alfred Craven, chief engineer of the Commission, submitted a report in which he stated that:

"'On June 17th, the secretary transmitted to me the recommendation of President Williams of the N. Y. M. Railway Corporation, dated June 15th, for the award of the contract for the completion of the signal in the Center street loop to the Federal Signal Company, the low bidder, together with form of contract and plans for approval. On June 15th I received a letter from Mr. Menden in reference to the same matter, in which he explained the proposed contract with the Federal Signal Company in greater detail, and made specific recommendations with regard thereto. While we were considering the contract, plans, bids and the recommendation of the company, the Union Switch and Signal Company submitted a protest to the Commission, under date of June 20th, claiming that the Federal Signal Company's fulfilment of the contract would involve an infringement of their patents. As a result of this protest, Commissioner Wood accorded the Union Switch and Signal Company an informal conference. This conference resulted in the Commission giving the company a formal hearing in the matter on July 2d. Also, as a result of the conference, it seemed to me that the recommendations of the N. Y. M. Railway Corporation should be more specific than contained in the president's letter of June 15th, and Mr. Menden's letter of the same date. Consequently, on June 29th, I requested a more definite report from Mr. Menden. He replied on July 1st, reiterating his previous recommendation. I still considered this reply unsatisfactory. Therefore, on July 3rd, I requested Mr. Menden to have an exhaustive examination made into the ability of the Federal Signal Company to do the work, and to submit another report based upon this examination. On July 13th I received such a further report from Mr. Menden, transmitting a copy of a

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report from his signal engineer, dated July 10th, copies of which two reports I attach hereto.

" ' Now, before stating my recommendation, I wish to present clearly the major reasons against and for an award to the Federal Signal Company.

" 'Against such an award there is the undoubted fact that this company has not had the experience in the signal field which will permit it to fulfill this contract initially in as satisfactory a manner as either of the other two companies, but ultimately I believe they could do so.

" ' The question of patent infringement has also been raised.

" ' These two considerations will undoubtedly result in some delay in the final completion of the contract, and thus will defer the temporary operation of the Center street loop to a date beyond which would probably be possible, if either of the other two signal companies received the award. However, I do not believe the operation of the Fourth Avenue subway would be delayed on this account, because the contract for the signals for this line has not been advertised for bids.

" 'As opposed to these considerations, we have the following reasons for making the award to the Federal Signal Company: ' "

Chairman Thompson.— Is that a part of the record of the Public Service Commission?

Commissioner Wood.— Yes.

Chairman Thompson.— Just offer the record.

Commissioner Wood.—All right. I will offer my reply to this, and have it incorporated, my reply to the charges.

Chairman Thompson.— Is this part of the record?

Commissioner Wood.—A good deal of it is taken from the record.

Chairman Thompson.— Whatever is a record of the Public Service Commission, offer it in the record here and we will take it.

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Commissioner Wood.— I will offer for the record the letter of Chief Engineer Craven, dated July 20, 1914, in relation to the award to the Federal Signal Company; and I will also offer for the record the letter of George S. Coleman, chief counsel to the Commission, regarding the award to the Federal Signal Company; and also I would like to call attention to the fact that in that letter Mr. Coleman says: "I have examined the papers in this matter, and find the questions involved are extremely complicated ones of electrical engineering and patent law"; and that both Mr. Coleman and Chief Engineer Craven reported that the bond of the Federal Signal Company should be made large enough to indemnify the railroad and the city in case of any patent suit. I would like also to call attention and have it made a matter of record that the matter of this contract was not assigned to me for report. It was assigned to the chief engineer and the counsel of the Commission for the report.

Chairman Thompson.— What are you doing now, detailing the record?

Commissioner Wood.— No, I am calling attention to the record. The protest was assigned to me and not the report on the whole thing. Their reports were made July 20th and 30th respectively. The matter of the protest against making the award was assigned to me. I did not permit the matter to drag along. I closed the hearing the same day. (See minutes of hearing.) I did make a verbal report agreeing with reports of chief engineer and counsel at meeting of July 30th, when motion was passed unanimously. Commissioner Williams's subsequent testimony shows that he is not sure that he made that motion. His testimony is as follows:

> "* * * but whether the motion as finally adopted was on my motion or on Commissioner Wood's or some one else's, I would not be sure. I do not remember that. The record would show."
>
> "Q. Have you got the record there? A. No, I have not. It is not here."

The record shows that this signal matter was regularly on the Public Service calendar for Thursday, July 30, 1914.

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Chairman Thompson.— You have already called attention to that three or four times. On the 24th it was arranged to be put on the calendar for the 30th, and on the 30th it was on the calendar and disposed of, and in connection with that we will put on the record that Mr. Johnson and Mr. Prout were discharged from the service of the Union Signal Company July 15th.

Commissioner Wood.— I would like to say that I do not know whether they were or not on that date.

I also offer in evidence a certified copy of the calendar of the Commission for July 30th.

(The same was received, and is as follows):

Page 4 of Rapid Transit Matters — Calendar Thursday, July 30, 1914

37 Rtes. 4 & 38. Letter from H. & M. R. R. Co. as to proposed passageway bet. Hudson Terminal Bldg and Cortlandt St. subway station in Greenwich St.; Report of Ch. Engr.

38 Sec. 2, Rte. 16. Report from Ch. Engr. recommending location of stairways at each corner of Jerome Ave. and Fordham Road leading to L. station.

39 Rte. 48, Park Pl. Sta. Request of property owner at No. 3 Park Pl. that subway entrance be placed at curb instead of building line; Report of Ch. Engr.

40 Contract No. 1. Application of Lederer Constr. Co. for add'l stairway at Freeman St. station; Reports of Ch. Engr.

41 Escalators. Report of Ch. Engr. as to use of elevators or escalators at stations on 2d and 3d Av. L. lines.

42 I. R. T. Co. Letter with plan showing proposed widening of platforms at 23d St. Station on 3d Av. L.; Reports of Counsel and Ch. Engr.

43 Sec. 1, Rte. 19 & 22. Letter from Counsel with blueprint of proposed entrance to Cypress Ave. station.

44 Sign Posts. Reports of Ch. Engr. with design of post to be placed at subway station entrances.

45 Eastern Parkway Line. Report by Ch. Engr. as to condition and preservation of trees along Eastern Parkway.

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46 I. R. T. Co. Application for approval of contract with Artemas Ward for vending and Advg. privileges on L and sub. lines.

47 I. R. T. Co. El Extensions. Application for permission to enter into contract for construction of el. extensions on percentage basis without public letting.

48 Centre St. Loop — Signaling. Proposed award of contract to Federal Signal Company; Reports of Ch. Engr.

49 Block Signaling on Various Lines — N. Y. Mun. Ry. Corpn. Proposed form of contract, etc.

50 B'Way El. Line, Bklyn. N. Y. Mun. Ry. Corpn; application for approval of McClintic-Marshall Co., lowest bidder, for furnishing structural steel to strengthen and widen existing structures; Reports of Counsel and Ch. Engr.; Approval Resolution.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.

I, Travis H. Whitney, Secretary of the Public Service Commission for the First District, do hereby certify that I have compared the above with the original on file in the office of the said Commission and that it is a correct transcript therefrom and of the whole of the original.

In testimony whereof I have hereunto subscribed my hand and affixed the seal of the Commission, this 2nd day of December, 1915.

(Seal) TRAVIS H. WHITNEY,
Secretary.

By Chairman Thompson:

Q. Don't you remember Mr. Prout and Mr. Johnson were discharged from the service of the Union Signal Company before the decision was rendered? A. I don't remember that.

Q. You knew Johnson? A. Yes, sir.

Q. And Prout? A. Yes, sir.

Q. You knew them well enough to get fifteen hundred dollars for this little service which you performed? A. That is not knowing them well.

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Q. You knew them well enough to get fifteen hundred dollars? A. I did business with them.

Q. You say you did not know them well enough to know when they were discharged by this company? A. I tell you the truth; I don't know, whether you believe it or not.

Q. Have you made all the statement you wish to make? A. With regard to this matter, yes.

Q. I wish you would tell me the conversations you had with Mr. Johnson at the time he called on you at the various times at the Public Service Commission? A. I don't remember what they were.

Q. If I should call your attention to them, do you think you would recollect as quick as you did about the fifteen-hundred-dollar payment? A. I don't think I would recollect it any quicker.

Q. What was there about this transaction that you don't seem to want to tell us? A. I have told you everything in regard to it, and I have not only done that, but I have traced the record.

Q. You have told me everything in regard to it? A. Yes, sir.

Q. Then I want to complain, because you haven't told me the conversations you had with Mr. Johnson, and I would like to have you tell them, then. A. He protested on their patents, on the ground of the Federal violating their patents.

Q. Didn't he call your attention to the fact you were a good friend of the company and you ought to be because you received this money? A. No, sir, he did not.

Q. Sure about that? A. Yes, sir.

Q. Did you call his attention to the fact, didn't you talk to him on the subject of a commission for their getting the work? A. Absolutely not.

Q. Didn't say anything to him about it? A. Absolutely not.

Q. Not at any time? A. No, sir, never.

Q. Never did? A. No, sir.

Q. Wasn't there some talk with Mr. Johnson to the effect that if they got this contract they would have to pay a commission to somebody? A. Absolutely not.

Q. Nothing at all? A. No, sir.

Q. Or nothing like that? A. No, sir.

Q. Do you know why Mr. Johnson was discharged? A. No, sir, I don't.

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Q. Did you ever hear? A. No, sir, I did not.

Q. Didn't some of the other officers call on you in reference to that? A. No, sir.

Q. Talk to you about it at all? A. No, sir.

Q. Can you conceive of any reason now why Mr. Williams testified as he did last spring before this Committee and Mr. Whitney testified as he did, that there was something that ought not to be in this matter? A. No, sir; everything was carried on just as expeditiously as any case that has ever been before the Commission.

Q. Don't talk to me about expedition by the Public Service Commission of the First District; I don't want to hear it. A. If you would look into it, you would find out it was so.

Q. I have looked into it, and I don't want to hear anything more about it — you never got angry at Mr. Whitney or Mr. Williams for testifying as they did last spring? A. I told you it was false.

Q. I say, did you ever get angry at them for it? A. Naturally I was indignant; yes, sir.

Q. Did you ever take it up with them at all? A. I told Commissioner Williams that testimony wasn't so, and he said he would correct it afterwards.

Q. Did you ever demand an explanation of their attitude? A. I spoke to Mr. Williams about his testimony and he told me he had said he was mistaken.

Q. That is what he told you? A. Yes, sir.

Q. Did you ever demand any explanation from Mr. Whitney about his testimony? A. Mr. Whitney didn't say anything to me as to the fact, and I never talked to Mr. Whitney about it, no.

Q. And he is a subordinate there and under you, and secretary appointed by you people? A. He wasn't appointed by me.

Q. He was a subordinate under you? A. Yes, sir.

Q. And he stays there dependent upon five votes, one of which is yours? A. The Commission appointed him. I didn't. He was there before I came.

Q. And he is a subordinate? A. Yes, sir.

Q. And he testified in this way, and you say you never called his attention to it since? A. He testified I had been in the

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railroad supply business, and I told you that he was mistaken as to part of his testimony.

Q. What did you do with that fifteen-hundred-dollar check? A. I deposited it.

Q. Where? A. I don't remember where I did deposit it.

Q. Was it in one of those bank accounts we have examined? A. Yes, it must have been.

Q. Haven't you got some other bank account somewhere? A. No, sir.

Q. Was this turned over to your brother? A. No, sir.

Q. It was left in your account? A. Yes, sir.

Q. You cannot tell me which bank it was put in? A. No, sir.

Q. Was it in the New Jersey Bank? A. It might have been.

Q. Will you give us a letter in relation to the New Jersey Bank, authorizing us to examine it in reference to that check? A. No, because it was prior to May 19, 1914. I will look it up myself and tell you about it.

Q. I don't care about your word about it, I want to examine the bank account, and I want to know if you will consent to it. A. I won't consent to it, no. I will look it up and let you know about it.

Q. I want to examine the bank account. A. I will let you know to-morrow.

By Senator Lawson:

Q. Didn't you testify you had turned over to your brother certain stock of one of these corporations? A. Yes, sir.

Q. Did you tell us what your brother had given you in return for this stock? A. He had advanced money to me.

Q. As a matter of fact, isn't your brother now in your debt, instead of your being in his debt? A. No, sir; he is not. We are square.

Q. When did you square up? A. Some time the early part of this year, I think. I mean to say, as I remember it, about the middle of this year.

Q. About July? A. About that, yes, sir.

Q. Then the last payments, that you made him in July here, July 9th, $495, July 21st, $544, is that right? A. I don't remember, Senator, what the date was. I can look it up and let you know.

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By Chairman Thompson:

Q. Those four-hundred-dollar checks all go to your brother, did you say? A. Some to my mother.

Q. Your mother's name is Alice? A. Yes, sir.

Senator Lawson.— You say you squared up with your brother in July of this year?

Commissioner Wood.—As I remember it.

Senator Lawson.— Turn to your transcript and note you are still paying out checks, and have for August paid out —

Commissioner Wood.— That is my mother. I will show you the checks if you ask for them. I have them.

Chairman Thompson.— If you will, do so.

Commissioner Wood.— I will do that to-morrow morning. I told you I would give you any information you wanted.

Senator Lawson.— There is an item of deposit, $17.50, every month; will you tell us about that?

Commissioner Wood.— That is an item my partner sends me, my old partner, for half of the office rent. He sends it to me and I deposit it.

Senator Lawson.— He pays you for the office rent?

Commissioner Wood.— Yes, sir, and I pay it.

Senator Thompson.— The office rent is thirty-five dollars?

Commissioner Wood.— Yes.

Chairman Thompson.— What do you get to pay the rent with?

Commissioner Wood.— That is a story.

Senator Lawson.— Mr. Havemeyer is still your partner?

Commissioner Wood.— No, sir; I haven't any partner there. He and I still keep the small office. If you call a partner paying joint rent.

Senator Lawson.— Isn't he a partner in this transaction?

Commissioner Wood.— We pay the rent together.

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Chairman Thompson.— What do you keep an office for?

Commissioner Wood.— Keep the stuff in there.

Chairman Thompson.— Can't you store stuff cheaper than thirty-five dollars a month in New York?

Commissioner Wood.— I think it would cost just about that much.

Chairman Thompson.— What does he use the office for?

Commissioner Wood.— Nothing at all. He is never there.

Chairman Thompson.— You each contribute $17.50 for the office?

Commissioner Wood.— Yes, sir.

Chairman Thompson.—And don't do anything with it?

Commissioner Wood.— No, sir.

Senator Foley.— Have you a long lease?

Commissioner Wood.— No, sir.

Chairman Thompson.— I did not intend to sit to any great extent to-day, because I consented to our lawyers having a long enough vacation to go home, and we will probably have our full staff here to-morrow morning, and we will now suspend until to-morrow morning at 11 o'clock.

(Whereupon, at 4 o'clock P. M., an adjournment was taken to 11 o'clock A. M. Tuesday, December 7, 1915, at the same place.)

DECEMBER 7, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee met pursuant to adjournment at 11 o'clock A. M. December 7, 1915, Chairman Thompson presiding.

Chairman Thompson.— The Committee will come to order.

Commissioner Wood, you may be excused until 2 o'clock, if you wish.

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Commissioner Wood.—At your request, I am going to give Mr. Morse permission to go into New Jersey and examine my bank account from January 1, 1914.

ASHLEY T. COLE, being recalled for further examination, testified as follows:

Examination by Chairman Thompson:

Q. Mr. Cole, at a hearing in the case of 1273, John C. Mayhew and others against the Kings County Lighting Company, a rate case, in the proceedings before the Public Service Commission of this district, on the 2d day of July, 1914, you came before the Commission and were interrogated in reference to various records which you found in the office of Sheehan & Collins in relation to this company, and it appeared from your examination at that time that you had these records, and we asked you yesterday to produce them before this Committee. A. Since I left here, Senator, I have examined the minutes of the testimony I gave July 2, 1914, and I find I did not refer to three bundles at all. Either Commissioner Maltbie or Mr. Semple misapprehended my statement. I corrected and said they were three index cards in the file of the counsel of the company, showing various papers relating to the Kings County Electric Light and Power Company.

Q. I call your attention to page 1242, where you say, "I got out only one bundle which would seem to be at all in line with what you want"; it appears from that testimony you referred to bundles yourself? A. Perhaps I had better tell you how the files are kept. Papers relating to any particular transaction are filed flat, and then indexed on a card, and when Commissioner Maltbie or Mr. Semple referred to my testimony, that it referred to three index cards, I referred to more than three bundles, and there were probably twenty or more negligence actions indexed, and a number of opinions given by counsel with regard to franchises of the former Kings County Gas and Illuminating Company in its contract with the city, and general correspondence a company would naturally have with its counsel, and various matters.

Q. Is there any objection to producing that; I don't care what it is. A. They don't give you any balance sheets of the Kings

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County Company or financial statement, and there is not a paper will show you what any of its property cost.

Q. Why not let us find that out and let us see the papers? A. I was never secretary or in any way connected with the former Kings County Illuminating Company, and I was secretary of the Kings County Lighting Company.

Q. I called you as Ashley T. Cole, an individual, and hoped you could appear and testify as to any capacity you acted in. All we want is the papers. A. Those papers are the papers of Mr. William F. Sheehan, the counsel to the company, and were in my custody as secretary, and I have not custody of them.

Q. You do not produce them? A. No, sir.

Q. You decline to produce them? A. It is not in my power to decline or assent.

Q. You say it is not in your power to produce them? A. It is not in my power to produce them.

Q. And you say they are in the custody of William F. Sheehan? A. Or his file, as counsel to the company.

Chairman Thompson.— The attorney will issue a subpoena for William F. Sheehan, directing him to produce these papers. Issue a subpoena for Mr. Sheehan to produce those papers.

(By direction of Chairman Thompson, the following statement, issued by the Committee, is incorporated and made a part of the minutes:

I think the action of the Governor removing Judge McCall will result in great public benefit.

The weakness of the Public Service Commission in this district has been apparent to the people for some time. Various causes have contributed to this, but the principal cause in my judgment has been the mistaken attitude of the men composing the Commission.

Governor Hughes voiced his desire to call to this service "Men owing no allegiance to any special interest, unembarrassed by either financial or political obligations, who should devote themselves with a single purpose to the protection of the rights of the people."

Until such men are obtained the Public Service Commissions Law cannot be properly tested.

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There is but one remedy — removal and displacement by men more nearly in touch with popular moral and business ideals.

Fidelity to the real purpose of the law therefore and not any matter of personality must have been the motive for executive action, which if properly pursued cannot help but improve the administration of the law to the benefit not only of patrons and the city, but the public service corporations themselves.

The Legislative Committee has been but a medium through which the proper information concerning the facts has been brought to the attention of the Governor, and credit should be given in full to the press of the city of New York for furnishing the Committee with a knowledge of the facts, and particularly to the New York Evening World, which through the greatest investigating writer on its staff, Sophie Irene Loeb, furnished the Committee with all the facts concerning the stock transaction which concentrated public attention, and really brought about the first step toward a better realization of the benefits of a satisfactory public service regulation for this community.

I wish also to acknowledge that whatever of success has been achieved by the Committee in its investigation of these transactions has been wholly due to the indefatigable assistance which Miss Loeb in her wealth of public spirit has contributed by attending daily the meetings of the Committee and generously giving advice and counsel, which has been readily accepted, from the wonderful store of scientific information which she has accumulated in months of study into the gas and other public utility corporations of this city.)

Chairman Thompson.— We will now suspend until 2 o'clock.

AFTERNOON SESSION

The Committee was called to order at 2 o'clock P. M., pursuant to recess, and Chairman Thompson announced that an elastic recess would be taken, the Committee to reconvene at the call of the Chair.

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The Committee was again called to order at 3 o'clock P. M., Chairman Thompson presiding.

WILLIAM F. SHEEHAN called to the stand and testified as follows:

Examination by Mr. Lewis:

Q. You were subpoenaed to appear this afternoon and to produce certain contracts, books of account, and so forth; have you the books with you? A. I have not any such books, and never have had.

Chairman Thompson.— You have been sworn in this matter?

Mr. Sheehan.— I do not think so.

(At this point the oath was administered to the witness.)

Mr. Sheehan.— That answer stands to the question Senator Lewis put.

Q. Have you any copies of contracts or original? A. We have contracts — we have copies of contracts, rather, I assume they are copies, between the old town of New Utrecht and the old company, and those contracts have been in evidence before the Public Service Commission and they are in evidence now. Those I can have sent to you if you want them. I cannot swear they are copies, but I assume they are, as they are from my files.

Q. Have you any original franchises? A. No, sir, never had any.

Q. Or books, receipts, or any balance sheets? A. Never seen one.

Q. Copies of the minutes of the meetings of the board of directors? A. I have some sort of a scrap memoranda, prepared evidently with reference to the holding of annual meetings. Whether those were the resolutions that were adopted, there is nothing in the record will show. If the Committee want those minutes, I will ask the officers of the company to send the certified copy of the minutes of stockholders' meetings.

Chairman Thompson.— What is the objection to your sending over whatever the records and papers are Mr. Cole testified to?

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Mr. Sheehan.— I am perfectly willing to send you anything I have got that is authentic and to say to the officers of the company that it is their duty to furnish you with an authenticated copy of any minutes of the stockholders' or directors' meetings, and I will see that the Committee will be furnished with those minutes.

Q. What we desire is the records of the company showing the actual amount of cash that has gone into the treasury of that company from the sales of stock or bonds or other securities, as well as the books of account showing those transactions. A. I think the officers should be able to prepare that for you very expeditiously.

Q. We have not been able to get it, and Mr. Cole, I understood this morning, said they were in your possession. A. They are not. I will make a request of the officers of the company as soon as I leave here, to give you that information, and I think you are entitled to it.

Mr. Lewis.— Will Mr. Cole tell us what he meant by stating the records were in your possession?

Mr. Cole.— I never said records such as you describe here were in his possession. I said we had a score or more of negligence actions, street-opening proceedings and copies of town contracts and tax and certiorari proceedings.

Mr. Sheehan.— I suppose we have records of one hundred proceedings there.

Chairman Thompson.— Certiorari, those might be useful.

Mr. Sheehan.— I will see as soon as we can agree on what you are entitled to, that the officers of the company furnish you with whatever you ask for.

Chairman Thompson.— Whatever you have got, we want brought over.

Mr. Sheehan.— What do you mean? Do you want me to bring everything we have in our office?

Chairman Thompson.— I want you to bring all the papers in your office relating to the Kings County Lighting Company that

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will be of any possible information, as to the amount of money invested in the Kings County Lighting Company from the time of its incorporation until December 18, 1889.

Mr. Sheehan.— I will be very glad to bring any such papers that are there, and I will say now on oath, there are no such papers there.

Chairman Thompson.— We will send a man to your office, if convenient, or have them come here, or send to the Kings County Lighting office, or have them brought here, either one.

Mr. Sheehan.— There is no objection to your having copies of the certiorari proceedings and the others, as far as there are any, that I know of.

Chairman Thompson.— Try and have the information here by 5 o'clock.

(Recess taken for ten minutes.)

AFTER RECESS

Senator Lawson presiding.

GEORGE V. S. WILLIAMS, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Commissioner Williams, I think when you were on the stand once before, you testified, did you not, that a part of the opinion which you had prepared in the Kings County Lighting Company case, the case No. 1273, was prepared for you by Mr. Semple? A. Yes, sir.

Q. Will you indicate so that the stenographer may be able to get it upon the record just which part Mr. Semple prepared? A. I thought I made it plain before about that, and I want to make it plain now, because something the Chairman of this Committee, I understand, has telegraphed the Governor to-day in the nature of a protest again Mr. Semple's appointment to the Public Service Commission. Mr. Semple prepared this after an argument before

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the whole Commission and after a conference with me in which I thought that I spoke the mind of the Commission, a majority, at least, and there were four points that Mr. Semple got from me before starting in to prepare the paper. He came down into my room with his papers, and he said, "Now, how will we treat these four different points: First: The going value?" and I told him that I thought from the testimony in the case, and as far as I had been able to study it out at that time, there should be nothing allowed for going value, and then I gave him —

Q. So he wrote that part of the opinion relating to the going value? A. No, not entirely. I can tell you exactly what part of it he wrote, and I can give you the part he wrote. Commissioner Hayward had it. When I wrote the opinion, at the request of Chairman McCall, after Commissioner Hayward had asked to be relieved from it, I took it in to Commissioner Hayward first, it having been his case first, as I had worked it out tentatively, and with it I took Mr. Semple's opinion which Commissioner Hayward had here the other day, and I haven't had it since, and that shows where I made interlineations or struck out something that I thought need not be in the opinion, or where it was repeated, or something of that sort, but I doubt very much if I can go through this opinion of mine and point out my words and Mr. Semple's. There were four things, and this should go in, in justice to Mr. Semple. He is one of the most efficient lawyers I ever met, and on every one of those cases, and I think I testified a short time ago, with the exception of Dr. Weber, I did not know a man would be more unpopular with the corporation, and if I did not testify to it already, then I want to now. And then as to the seven and one-half return which Commissioner Maltbie allowed, and I said in my opinion, and I thought on the opinion of the other that had gone to the Court of Appeals, that seven and a half per cent should stay as the return, and the actual leakage in place of the eleven per cent. The testimony was not taken before me, and the gas oil contract, there being nothing in the records to show it was anything except an improvident contract, that it should be taken at the face value or at the contract price, but that the condition should run only for a short time, and I thought a year should be sufficient, but we never came to drawing an order which might have been modified or changed in accordance with Commissioner

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Hayward's opinion. There is very little difference between Commissioner Hayward and myself, when you come down to it. It is a question of a short time, and we will know, and it is such a short time it does not make any difference.

Q. You have indicated substantially the part of the opinion that Mr. Semple took care of? A. Those four things.

Q. Will you indicate what part of the opinion was prepared for you by Mr. Hine, if any? A. I would not want to say whether Mr. Hine or Dr. Weber's department prepared the statistical part.

Q. Mr. Hine had something to do with it? A. Yes, sir, he was the gas engineer, and he did all of the appraising or determining what amount of money they would put into the price, and what depreciation had been taken off.

Q. Can you indicate any part of the opinion which Mr. Hine prepared? A. No, sir; I cannot.

Senator Lawson.— You are pretty clear on what Mr. Semple prepared, and can't you go back?

Commissioner Williams.— No, sir; he did not prepare it for me. If he prepared it, it was for Mr. Semple. That is the reason I can't tell you.

Q. Did you have any other expert assistance in preparing the opinion other than that furnished by Mr. Semple or Mr. Hine? A. Dr. Weber. I think Dr. Weber was present when Mr. Semple talked to me about the price.

Q. Was there a schedule made up upon which you based your schedule as to price on page 29 of the report; did you have anything before you similar to that? A. It is word for word as furnished by Mr. Semple, and I supposed, of course, he got it from Dr. Weber or some of his assistants.

Q. Did you give him any instructions as to how it should be made up? A. Unless contained in these four matters I have mentioned, or four heads I have mentioned.

Q. Commissioner, I show you a document which appears to be a carbon copy of an original entitled, "Estimate for Year 1916. Apportionment between Street Lighting and Commercial. Property and Investment, Expenses, Etc., Kings County Lighting Company, Case No. 1273;" have you ever seen that before? A. Well,

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not unless it is in Commissioner Hayward's opinion. I don't know whether this is something that was gotten up in that connection or not.

Q. It is hardly for Commissioner Hayward's use, because it is an estimate for the rate for 1916, is it not? A. I don't remember of ever seeing this before.

Q. It is, is it not, an estimate for the proper rate for 1916, or an estimate of a rate for 1916? A. Yes, sir.

Q. Is that in the form in which those matters are usually submitted by the Commission's engineers? A. I cannot tell. It never was submitted to me. I don't remember of ever seeing this. It may have been something that Mr. Semple had, but I don't remember it.

Q. Do you suppose Mr. Semple prepared that in that form and did not submit it to you? A. I don't know. I don't remember ever seeing this at all.

Q. I notice in here, on this paper, a rate of return of 7 per cent is allowed, and that twenty-eight cents for the production expense is allowed, instead of thirty-three, and what the other differences are I don't know, but it is evidently a table figured on a 7 per cent return with a twenty-eight cent production expense, and there may be other differences? A. I don't know. I don't know how that came about.

Q. You are quite sure you never saw it? A. I am quite sure it was never brought to my attention. I do notice those differences.

Q. Have you any idea who prepared that? A. No, sir.

Q. Have you any means of ascertaining who prepared it? A. I think we could find out in the Commission.

Q. Was this ever produced before you at any of the hearings? A. I never attended any of the hearings.

Q. You prepared your opinion based upon the argument and the assistants? A. I did not attend the hearing. There was some exhibits I asked for to go over after I got Mr. Semple's memorandum.

Q. This you think was prepared either by Mr. Hine or by Dr. Weber? A. I wouldn't say that, no. It looks like the data that comes from Dr. Weber's department, the typing and all of that, but I had rather ask him about that.

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Q. Did you notice that this is based upon an appraised valuation of $3,100,000, instead of $3,050,000? A. I noticed that.

Q. Did you notice that this is based upon an actual production of a million and ninety-five thousand units of a thousand feet each, instead of a million one thousand three hundred and seventy units, as set forth in your table? A. No, sir; I didn't notice that. Is that a greater amount?

Q. Yes; this estimates a production for 1916 of a million ninety-five thousand, an increase of ninety-three thousand six hundred thirty thousand cubic feet? A. More than mine?

Q. More than yours? A. Yes, sir.

Q. Nearly one hundred thousand units of a thousand feet per unit greater than your estimated production? A. I don't know. It may be that — Let me take that opinion, and I will show you, and tell you what Mr. Semple said about that. This I know is his. "In two of the three years covered by the Commission's estimate, estimated figures were very close to the actual sale, and while in 1913 the rate of increase was less than 10 per cent, in the following year it was more than 10 per cent. The company shows for the first four months of 1915 that there was very little increase over the same months of 1914, but this is too short a period upon which to predicate an opinion as to the year's output. While the war abroad may have affected conditions to some extent in 1915, an estimate for the future should also take account of the increase in rapid transit facilities in the locality which has just been put in operation. The sales in 1914 were for commercial gas, 735,748 thousand cubic feet, and for street lighting, 82,644 thousand cubic feet, or a total of 818,392 thousand cubic feet. There will unquestionably be an increase in this output for 1915 and 1916, but possibly not as great as in former years. We have estimated for the period September, 1915, to September, 1916, that the sales of commercial gas will be not less than 774,170 thousand cubic feet, and for street lighting, not less than 84,000 thousand cubic feet, making a total of 858,170 thousand cubic feet."

Q. You notice the estimate there "will not be less" in every instance? A. Yes, sir.

Q. Isn't that giving the company the benefit of any excess in production and excess of profits upon excess of production? A. I don't think it was meant in that way.

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Q. Isn't that the practical effect of it? A. I don't think so.

Q. He is estimating what is the minimum there? A. Yes, sir.

Q. And he is making his estimate of return based upon the minimum production, and he is disregarding the probabilities, is he not? A. I wouldn't say so. It should have said that would be a fair estimate, instead of it would not be less.

Q. He is disregarding the possibilities, isn't he? A. I don't think so. He says that is a fair estimate, without reading the entire language. There was no intention on my part, or anybody else's to give the company anything they should not have got.

Q. This estimate is for the fiscal year of 1916, is it not? A. That may make a difference.

Q. The fiscal year 1916, it is estimated there will be a million and ninety-five thousand units of a thousand cubic feet, and which would be manufactured? A. Yes, sir.

Q. It is estimated that 890,255 will be available for commercial sales; while your estimate, as contained in your opinion, is 774,-170; if the estimate set forth in this unidentified schedule is correct, the profit to the company for 1916 will be greater than you anticipated or estimated in your schedule, will it not? A. Naturally.

Q. Your estimate of production expense as shown in your schedule is thirty-three and a half cents per thousand cubic feet, and in this unidentified schedule the estimated cost of production expense is twenty-eight cents a thousand cubic feet; where do you suppose that idea of twenty-eight cents originated? A. It must have been in the oil. It must have been in the oil, because the price of oil, after what the Brooklyn Union and the Consolidated Gas were finally able to get their contract reduced to, makes about that much difference.

Q. Was there any expectation there would be a reduction allowed during the year 1916? A. Not that I ever heard of.

Q. Prior to the termination of the contract? A. No, sir; that would have been an arbitrary cut.

Q. Was there any good reason for using that as a basis for production cost? A. I don't think so, and I think that is the reason Mr. Semple did not use it, if he had it. That would be about what it would figure. One cent in the price of oil is four cents on a thousand of gas, and the Brooklyn Union and the Consolidated,

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while they made their contracts for five cents for oil when it was high, were able to get their contracts abrogated in some way, and made new contracts with the Standard Oil Company for something like three cents.

Q. Did you take into consideration in making your schedule, the possibility of an abrogation of the oil contract which calls for the high rate of .04575? A. I don't remember whether I asked the question, or one of the other Commissioners, on the argument. It was mentioned — the question was brought up in the argument, and either I or some other Commissioner asked that question, if they had been able to do anything on account of getting their contract abrogated with the Standard Oil Company, and there was some such thing as this, and I am only speaking from recollection. There was some suggestion like this, that they didn't have influence enough, and couldn't do it.

Q. The matter of getting the reduction was a matter of sufficient influence, was it? A. That is the way it impressed me. It may be I got the wrong impression from it. The fact is that the Consolidated Company, and the Brooklyn Union Gas Company had contracts for over five cents for their oil, and then this contract was made,— I don't know whether in between the time that they got their contract, but I am under the impression it was, they got theirs for over five cents, and this company came along and got the contract, and after the price of oil dropped, the Consolidated and the Brooklyn Union Company —

Q. What do you mean by dropped? A. Dropped to about three cents.

Q. What do you mean? Market price? A. There is no market price, but they couldn't ship it abroad, or something, and it was clearly hinted it was on account of the, either in the hearing or afterwards, on account of certain stockholders have interest in Standard Oil, and largely interested in Brooklyn Union and Consolidated.

Q. And for that reason they succeeded in getting a reduction? A. Yes, sir.

Q. Are there any stockholders of the Kings County Company that were interested in Standard Oil, do you know? A. Evidently not, from the suggestions on the hearing. I never heard that there were.

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Q. Did you take into consideration, in writing your opinion, the evidence taken before Commissioner Hayward? A. Yes, sir, all the evidence.

Q. And do you recall the evidence taken before Commissioner Hayward shows that at the high price of oil, the cost of production rarely, if ever, exceeds thirty cents per thousand cubic feet? A. I don't remember that.

Q. Isn't it a fact there was some testimony to that effect offered? A. I don't remember having it called to my attention now, or seeing it.

Q. If you read the testimony, you must have seen it, of course? A. The actual cost of production was, as I supposed, reflected in that opinion which was prepared by Mr. Semple. Outside of the price of oil and the leakage, I did not have anything to say about it.

Senator Lawson.— For the purposes of the record, I wish to note the presence of Assemblyman Callahan, who takes the place of Assemblyman Donahue, who has resigned.

Q. Did you have prepared for you, or did you ever see any record similar to this or based upon this table of production? A. Not that I remember of.

Q. And production cost? A. Not based upon those assumptions at all.

Q. Did you ever know of anyone appraising the properties of the Kings County Lighting Company, at $3,100,000? A. I don't remember whether that is the amount in the opinion.

Q. Your opinion shows $3,050,000? A. That is what I supposed was the appraisal.

Q. Was that the appraisal that you made yourself? A. No, sir.

Q. By whom was it made? A. It must have been made by Mr. Hine, or somebody under him, because that is his department. I am quite sure those figures — I don't know about the appraisal before this last — whether Mr. Hine — I think he was with the Commission — here is Mr. Semple now, perhaps he can tell. Mr. Semple, was Mr. Hine the man who made the appraisal in the first instance in the Kings County gas case?

Mr. Semple.— No, made by the transportation bureau, Mr. Wilder's office.

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Q. You did not know of this appraisal at $3,100,000? A. Three million fifty thousand dollars is what I have here. From the opinion I see the present value of the plant, other than land, was put down at one million nine hundred thirty-nine thousand, and the land, six hundred and fifty thousand, for preliminary development two hundred and sixty thousand, which was the amount allowed by Commissioner Maltbie in the other case, and working capital a hundred and twenty thousand, and that makes — I think eighty thousand allowed as working capital, and the company contended they should have more, and Commissioner Maltbie also, sort of a sliding scale — as provision ought to be made for additional appliances and — For 1915 (should be 1916) it is considered three million fifty thousand ought to be allowed as a fair value to be allowed in this case. That was not the exact appraisal, but appraisal added to the capital, and the additional capital.

Q. Do you know who was responsible for making the computation based upon the 7 per cent return on three million one hundred thousand? A. No, sir, I don't. Mr. Semple is here and he may know about it.

Q. I want to know what you know about it, if anything. A. No, sir; I don't remember ever having seen that at all.

Senator Lawson.— Never saw the paper produced at any hearing you attended or in any arguments that were made?

Commissioner Williams.— No, sir.

Q. It is a fact, is it not, Mr. Williams, that a return of 7½ per cent upon an appraised value of three million and fifty thousand, would require a larger income and justify a larger rate than a return of 7 per cent on an appraised valuation of three million one hundred thousand dollars? A. That is very easily figured. I should say so.

Q. I have myself figured it, and I get this computation; a return of 7½ per cent upon an appraised value of three million fifty thousand dollars would require an income of $228,750, while a return of 7 per cent upon $3,100,000 would require a return of $217,000; in other words your opinion as rendered providing for a seven and a half return upon $3,050,000 appraised value, is more favorable to the company than the 7 per cent return based upon a three million one hundred thousand dollars of appraised

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value, as shown by this unidentified value? A. That would naturally follow. I don't know where that came from.

Q. This seems to be a Public Service Commission document, and numbered 1273. A. I don't know where it came from. Whatever there was, there were four things I told Mr. Semple to bear in mind writing his opinion; there was to be no going value, 7½ per cent return, the rate to be figured, sales to be figured, on actual leakage, and the gas contract was to be taken as it stood.

OLIVER C. SEMPLE, being first duly sworn, testified as follows:

Examination by Mr. Lewis:

Q. You are one of the counsel for the Public Service Commission, are you? A. Yes, sir.

Q. And did you aid in the preparation of the proposed opinion of Commissioner Williams in case 1273? A. I don't know, sir, as I have never seen his proposed opinion.

Q. Will you examine that document and see if you had any part in its preparation? A. I know I had no part in its preparation except I prepared certain statement of facts and law for the use of the Commissioner in the preparation of such opinion as he might wish to prepare, as I usually do in quite complicated cases. I have not seen this until this moment, and have not had an opportunity to read it.

Q. You have never seen the opinion as finally rendered by Commissioner Williams and distributed among the Commissioners, as I think he has testified, for their consideration? A. No, sir.

Q. Did you have some instructions from Commissioner Williams upon the subject as to what he desired in the way of assistance in the preparation of the opinion? A. No, except to this extent; there were a number of contested points of very material character affecting any possible rate which the Commissioner might desire to make, which I could not prepare my statement of facts with reference to until the Commissioner who presided and who was, I suppose, to prepare the opinion, had indicated to me what his position was. Of course there were a great many legal questions and other questions in this case. It was a very complicated one, which had been standing a long time, and there were

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a great many things as to which there was no dispute, but the question of going value which was very strongly litigated by the company and sent back from the Court of Appeals, the question of the gas oil contract, and the question of unaccounted for gas, and the question of whether the company should be allowed a seven and a half per cent. or a seven per cent., or no special amount, was mentioned, as some rate of return upon their investment for the purpose of the enterprise, which was necessary I should know before I could formulate anything whatever to assist Commissioners who might be considering the matter in working out what their decision as to the rate in that district should be, and I asked Commissioner Williams as soon as he was ready to tell me what his opinion was with reference to those several questions and to let me know and I would prepare the statement which he could use as much or as little as he chose in the preparation of his opinion.

Q. Did he tell you? A. He did.

Q. Will you tell us what his instructions were on those subjects? A. As I remember it, he said there was to be no going value whatever. The gas oil contract was to be taken at the rate at which the price was fixed in the contract of the company of January, I think it was, of that year. The rate of return was to be seven and one half per cent. and the unaccounted for gas was to be taken at the experience of the company, average experience of the company, which, as I remember it, was somewhere about fourteen per cent.

Q. Did he tell you his reasons for disregarding the question of going value? A. I don't remember that he did.

Q. Did you discuss that question with him at all? A. I don't remember that Commissioner Williams discussed that question with me at all. Personally I had very strong ideas about the matter, but I did not undertake to give him my opinions, because he did not ask for them.

Q. Did you discuss with him the proposition of the oil contract? A. No.

Q. No discussion whatever? A. No discussion whatever.

Q. You were familiar with the terms of that contract? A. I put it in evidence.

Q. And you knew of the fact that the rate was very much in excess of the rate for oil being paid by other companies? A. I proved that fact.

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Q. Had you at the time any opinion as to the propriety of allowing the rate for the purchase of oil to enter into the determination of the rate at which the gas should be sold? A. I did have an opinion.

Q. Did your opinion coincide with Commissioner Williams upon that subject? A. I have not read his opinion, but from what I read in the paper, it did not.

Q. What theory did you have upon the subject of the oil contract, if any? A. I am perfectly willing and glad to give my opinion, except I feel a little delicate about it in this sense: I am the counsel to the Commission. If I give an opinion which possibly the Commission itself later on does not see fit to follow, I am furnishing a basis, so far as anyone may think my opinion is of any consequence, for possible criticism of the Commissioners who do not agree with me. I am inclined to think it is possible some people may think I am outstepping the duties of the Commission. I am willing to assist, and I venture to hope the Commission will not criticize me too severely if I tell you what I thought about it.

Senator Lawson.— You concede it was your duty to give the Commission the benefit of your counsel?

Mr. Semple.— I never felt it was my duty as counsel to the Commission to force my opinions upon the Commission. They knew my opinions were at their service and I was acquainted with this case from the day it began, and if they wished my opinion or thought it of any value, I would have given it at any instant they desired, and they knew it, and it was not, I felt, for me to go to these gentlemen who came in there long after I entered the service of the Commission, and force my opinions upon them, and I did not do it. I had an opinion, and have it now.

Q. Will you give us the benefit of your opinion on the oil contract, which you had, and which you hold now? A. My opinion was it was the right of the Commission in considering as a proper price for the cost of furnishing oil during the period for which they were furnishing gas, to take into consideration all the circumstances which should affect the price of oil during that period, and that they were not bound under the circumstances under which the proof was put in, in this case, by a price for gas oil,

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under a contract entered into by this company in January of a certain year, I think 1914, under which they did not draw a gallon of oil until the following November.

Q. Nine-months' period or more, and you were not asked by Commissioner Williams or any other Commissioner for your views upon that subject? A. I was not.

Q. Did you discuss with Commissioner Williams the rate at which the gas should be sold, the rate to be established? A. My impression is, Mr. Lewis, that that sheet which you had in your hand a moment ago, and which you showed to Commissioner Williams, I think that was prepared for the purpose of my argument. Yes, sir, that was prepared for the purpose of my argument by the statistician of the Commission, Dr. Weber, or his office, at my request, so that in the course of the argument, I could bring before the five Commissioners, some of whom had never heard of this case except in a most general way, the fact on which the contest was being waged, and I wished to show to them the various details of things which would come before them necessarily in making up their minds as to what the necessary revenues in thousand cubic feet in cents should be to be taken from the consumer. This sheet was prepared by Dr. Weber, and I presented a copy of it to each of the Commissioners at the time of the argument, and if you have seen my own copy of the minutes which I kept for my own use in working on this case, you will find pasted on the last blank sheet a copy of this, which I used in my argument.

Q. Was a copy of this given to Commissioner Williams? A. I did not see it given to him, but he was sitting there, and each Commissioner had a copy of it.

Q. You realize this was based upon a basis of 7 per cent return to the company? A. Yes, sir.

Q. Was that a view which you entertained as the proper rate to be allowed? A. I asked to have it prepared on that basis, and I thought and still think it was the proper rate.

Q. I notice the appraised value set out in this schedule is $3,100,000, instead of $3,050,000; what do you know of the investigation which resulted in an appraised value of $3,100,000? A. I am not very clear in reference to that. I think I told Dr. Weber he had better take some even figure; take say, $3,100,000.

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Q. Did you mention the figure to him? A. I think I did, and that was prior to the evidence, as I remember it, being finally closed in the case, because it took some little time to make the various computations, and in a general way I had an idea the figure of the appraised value of the company's property would be about that, and for my purposes it was immaterial, and I set it at that figure of $3,100,000.

Q. I notice that the production cost as set out in this schedule which I have heretofore called an unidentified schedule, but which you have now identified as your schedule, is fixed at twenty-eight cents; upon what did you base that? A. I did not prepare that, General Lewis, but I can tell you what I think the twenty-eight cents was. Dr. Weber prepared it from the figures which he had. I think the twenty-eight cents was about the average rate for gas oil. My impression —

Q. Do you mean the average cost of production by the various companies? A. No, sir; I don't mean that. But I think he increased the amount for gas oil over what it was by Commissioner Maltbie's original opinion by a certain number of cents. I think in his opinion it was twenty-four or twenty-five cents, and according to the contract with the Kings County Company, which is here in question, would make it somewhere about thirty-three cents, and Dr. Weber considered that thirty-three cents would be too high, and that the proper price for gas oil to be allowed would be somewhere in the neighborhood of twenty-eight cents. I have not seen that sheet for some little time, and I have not seen the statement of facts which I prepared for Commissioner Williams since August, and some of these things are not at present fresh in my mind, but I think I have answered your question as best I can at present.

Q. The production cost as set out on this schedule which you have identified, and which I offer in evidence, and will have marked —

(Paper received and marked Exhibit A of date December 7, 1915.)

— is $306,600, on a basis of a million and ninety-five thousand units of a thousand cubic feet per unit; did you take any step to

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ascertain whether or not that was properly ascertained, that amount was properly ascertained? A. You mean the one million ninety-five thousand?

Q. Yes, on the million ninety-five thousand units? A. I do not remember in what manner that figure was arrived at. It seems to me that it was about the same percentage that was used in Commissioner Maltbie's opinion. That is, the gas produced over the gas sold is a certain per cent, and I think that million ninety-five thousand is about the same percentage, and Dr. Weber uses that.

Q. You think the figures, then, were the figures of the probable production, as estimated by Dr. Weber? A. They were. This was Dr. Weber's estimate, as based upon Mr. Maltbie's opinion.

Exhibit A of date December 7, 1915, is as follows:

ESTIMATE FOR YEAR 1916. APPORTIONMENT BETWEEN STREET LIGHTING AND COMMERCIAL. PROPERTY AND INVESTMENT; EXPENSES, ETC.	Kings County Lighting Co. (Case No. 1273)	
Tangible property — present value Dec. 31, 1914.....	$1,939,512 77	
(Per Exhibit 47 — Mr. Hine's appraisal.)		
Land and overhead charges (per Opinion of 1911).....	910,000 00	
Working capital and estimated additions after Jan. 1, 1915..	250,487 23	
Total.....	$3,100,000 00	
Return on $3,100,000 at 7 per cent.....		$217,000 00
Deduct:		
Property devoted to street lighting per Exh. 47.....	11,000 00	
	$3,089,000 00	

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Property devoted to commercial lighting per Exh. 47..	$283,000 00	
Balance divided in proportion that estimated commercial sales bears to estimated total sales (890,255÷974,560 or 91.3%)	$2,561,878 00	
Add:		
Property devoted to commercial as follows: Gas services, meters, gas meter installation and gas engines and appliances	283,000 00	
	$2,844,878 00	
Return on $2,844,878.00 for commercial at 7 per cent		$199,141 00

	Estimate 1916 Total	Commercial
Gas made — M cu. ft.....	1,095,000	.....
Sales — Commercial, incl. public bldgs.	890,255	890,255
Sales — Street lighting	84,305	.....
Total sales — M cu. ft..	974,560	890,255
Expenses, etc.:		
Production expenses—1,095,000 cu. ft. made at 28c...	$306,600	(b) $279,926
Street lighting — proportion of $46,000	(a) 30,000	.....
Other operating — (e) — 974,560 cu. ft. sold at 23c.	224,149	(c) 210,610
Depreciation and other reserves; Est. increase, $3000 per annum	57,000	(b) 52,041
Return on fair value of property — as shown above....	217,000	199,141
Total	$834,749	$741,718

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Less:		
Street lighting	(d) $119,431	.....
Miscellaneous revenue	12,000	$12,000
Total credits	$131,431	$12,000
Necessary revenue from commercial sales	703,318	729,718
Necessary revenue per M cu. ft. (cents)	79.00	81.97

(a) Expenses for year estimated at $46,000 (1914 — $45,529). Contract expires September 2, 1916, therefore expenses are here reduced by one-third of $46,000 or $16,000.

(b) These items are divided in proportion that estimated commercial sales bears to total estimated sales, or 91.3 per cent.

(c) This amount consists (1) of items that are strictly commercial expenses, using the 1914 experience per Exh. 49 ($68,529) (2) the remaining expenses in the proportion of estimated commercial sales to the total estimated sales, or 91.3 per cent.

(d) Revenue calculated at $1.75 for 8 mos. (to Sept. 1, expiration of contract) and $0.75 for remaining 4 months.

(e) Includes taxes and uncollectible bills, but excludes depreciation.

Q. You are familiar with Dr. Weber's work, are you, Mr. Semple? A. Yes, sir.

Q. And it is your opinion that this was prepared by Dr. Weber for you? A. Yes, sir; I have not a doubt about it. That is by Dr. Weber or his office.

Q. He made himself responsible for it, of course? A. Yes, sir.

Q. And did he use the 7 per cent return rate, or 7 per cent rate of return, under instructions from you? A. I think he did. I know it was 7 per cent was the rate that I thought was proper. I am very sure I asked him to prepare the calculations on that rate.

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Q. Did you discuss the rate of return with Commissioner Williams or any of the other Commissioners? A. I did not discuss it at all with any of the other Commissioners. I might say that Commissioner Williams did discuss it with me. He is the Commissioner and I am the counsel. It is proper for me to say he discussed that with me.

Q. And did you understand from his attitude that he favored a rate of 7½ instead of a rate of 7 per cent? A. I did.

Q. And did he give you his line of reasoning which led to that conclusion? A. He did not, except to this extent: He said the Appellate Division or the Court of Appeals had approved a return on the basis of 7½ per cent and that he did not wish in any particular to go contrary to what the Court of Appeals, I think it was the Court of Appeals, had approved. I mean the Court of Appeals had, he said, had approved, and therefore it should be at a 7½ per cent.

Q. Commissioner Maltbie allowed a seven and a half per cent rate in the rate of return in his determination, did he not? A. He did.

Q. And his rate, as determined upon by him, was eighty or eighty-five cents? Do you recall? A. It seems to me it was eighty-five cents for a period, and then eighty cents.

Chairman Thompson presiding.

Q. Can you account for Commissioner Maltbie's ability to allow a return of 7½ per cent of an eighty-five and eighty-cent rate, as compared with Commissioner Williams' return of 7½ per cent on a ninety-five-cent rate? A. Why, speaking not exactly, because I have not yet the figures definitely in mind, I know that there was one figure which, according to the exhibits in the case at the time of Commissioner Maltbie's opinion, was considerably less than it was shown to be at this session, after the matter came back from the Court of Appeals, and that was the gas oil contract. I think there was a difference of something like two or three cents in the cost of gas oil, owing to the difference in that contract.

Q. Do you recall any other item? A. I do not for the moment.

Q. A rate of eighty cents per thousand cubic feet for gas to the consumer would produce an amount according to your calculation as set forth in this schedule, sufficient to pay 7 per cent return

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upon the investment, would it not? A. I think that this sheet which you hand me shows a separation between the total and the commercial gas. If the total were considered, it seems to me the price necessary would be seventy-nine cents. If the commercial gas were considered, it should be something like 81.97 or 82 per cent.

Chairman Thompson.— Assume there is no street lighting at all.

Mr. Semple.— There is street lighting, and we had to consider the apportionment between the commercial and public lighting, to show what the commercial consumer should pay. That was the purpose of that separation there.

Mr. Lewis.— Mr. Semple, can you wait a few minutes until we call another witness who is in a hurry to get away?

Mr. Semple.— Yes, sir.

WILLIAM C. BANKS, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Banks, you are practically the owner of the Northwestern Construction Company, are you not? A. Yes, sir; my brother-in-law and myself.

Q. What is your brother-in-law's name? A. Harry R. West.

Q. How long have you owned it? A. Ever since June 2, 1914.

Q. And you have regular books of account, I assume? A. Yes, sir,— well, the Northwestern Construction Company did not do any business since June 15th. The N. W. Equipment Company took over the business and good will of the Northwestern Construction Company in June, the 15th, about, 1915.

Q. Where are the books? A. Over at 30 Church street.

Q. What do they consist of? A. Ledgers and cash books.

Q. And correspondence? A. Yes, sir; files.

Q. And check books? A. Yes, sir.

Q. And cancelled checks? A. Yes, sir.

Q. Anything else? A. That is about all. Regular corporation books.

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Q. Will you produce them for the use of this Committee? A. Of the Northwestern Construction Company?

Chairman Thompson.— Both.

Mr. Banks.— Of the N. W. Equipment Co., lessee?

Chairman Thompson.— Yes.

Mr. Banks.— Yes, sir. Anything you want to see; the books are open to anybody. The books are open to you gentlemen any time you want to see them.

(It was arranged that Mr. Morse should inspect the books.)

OLIVER C. SEMPLE, being called for further examination, testified as follows:

By Mr. Lewis:

Q. Did you make any computation to see or ascertain what the profits of the company would be based on an 80-cent rate, other than this schedule here, did you make any yourself, independently? A. I don't remember that I did, Mr. Lewis. It is possible that I did some rough calculation. I meant to do that, but I have no clear remembrance of having done so.

Q. How long was this matter pending before the Commission, down to the time that Commissioner Williams' opinion was completed? A. I cannot be sure of the date, Mr. Lewis, I should suppose that in the early part of the opinion of Mr. Williams, if he has taken any draft that I mapped out of the facts, you will find the date of the commencement of the proceeding. It certainly was a considerable number of years. It does not appear; at least I do not see it.

Chairman Thompson.— This case has the record of being the longest pending case before this Commission, I think.

Q. Complaints were filed as long ago as 1910 or 1911, in your opinion? A. I should think so, possibly by 1910.

Q. And during that time the company has been —

Chairman Thompson.— September 10, 1910.

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Q. During that time the company has been charging consumers what rate, if you know? A. I think a dollar a M feet up to some time last summer — not last summer but a year ago last summer, when they reduced it I believe to ninety-five cents.

Miss Loeb.—Pending this investigation only.

Q. Have you made an estimate of how much in dollars and cents a difference of 5 cents per M feet in the rate would come to upon the amount consumed in this territory? A. I have made no computation, no.

Q. Roughly, it would be fifty thousand dollars, five per cent on a million units? A. I assume that your calculation is right. I am very slow at figures, and I should have to figure it out, but I presume that is probably correct.

Q. Has it been the custom of the Commission to confer with you and advise with you in matters of this sort from time to time? A. Do you mean the present Commission?

Q. Yes. A. No, sir.

Q. Did the former Commission? A. The former Commission did.

Q. And did the former Commission give heed to your suggestions to a greater extent than the present Commission have? A. The former Commission were all personal friends of mine, and I think they did, yes, sir.

Chairman Thompson.— Aren't you friendly with these?

Mr. Semple.— Exactly so, but not to the same extent.

Q. When did you first know of Commissioner Williams' opinion having been completed and distributed among the Commissioners? A. I think it was about the time, Mr. Lewis, that Commissioner Williams presented this paper to your Committee. I remember picking up what we are accustomed to call the Commissioner's calendar of a certain Friday, and seeing on it Mayhew vs. Kings County Gas; opinion by Commissioner Williams. Matter laid over. That is the first intimation I had any opinion had been prepared.

Q. Did you know of an opinion prepared subsequently by Commissioner Hayward? A. I did.

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Q. Have you discussed the matter with Commissioner Hayward since the rendition of Commissioner Williams' opinion? A. I have spoken to Mr. Hayward, or, rather, Mr. Hayward has spoken to me about it, yes, sir.

Q. When did that conversation take place? A. I cannot remember, to be sure, but I think it was last week or ten days.

Q. You have seen Commissioner Hayward's opinion, have you, as he has prepared it? A. I think I saw what was a draft of it, but I am not sure I have seen the final opinion.

Q. You know that he recommended a lower rate than Commissioner Williams? A. I think I can say that I do. I know the draft indicated that. I have not seen the final opinion.

Q. Did he tell you he had determined on recommending a lower rate than the rate recommended by Commissioner Williams? A. Yes, sir; he did.

Q. Did he tell you what that lower rate was? A. I don't think he did. I have an impression, however, it was about eighty-five cents. I am not sure that he told me, however.

Q. Do you remember any other conversation that took place between you and Commissioner Hayward, anything you said to him, and anything he said to you upon the subject? A. Why, Commissioner Hayward spoke to me the other day and asked me in reference to this, and stated he was preparing a memorandum and asked me if I would look it over, and I did, and asked me if I would draw a certain sentence or clause, and it was a question of the seven or seven and a half per cent, that the Court of Appeals had apparently approved of seven and a half per cent, had approved of seven and a half per cent, but Commissioner Maltbie had allowed it as a sort of a recognition of going value, and now, as we found no going value at the present time existing in the company, he did not see any reason why we should allow seven and a half per cent, and I agreed with him, and I prepared a clause, a paragraph, and whether he incorporated it in his opinion I don't know, and I don't remember whether he has spoken to me on the subject other than that. I don't remember that he has.

Q. Have you told us all you remember of the conversation at that time? A. Yes, sir. He told me about the gas oil contract at that time.

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Chairman Thompson.— I am advised that Assemblyman Donohue has resigned and Speaker Sweet has appointed Assemblyman Joseph Callahan, of the Thirty-fifth District, New York city, in his place, and Assemblyman Callahan is present and will give us the benefit of his counsel and advice in the future, and I assume he will vote with the majority on all questions.

Q. Have you told us all you remember of the conversation at that time? A. He referred to the matter of the gas oil rates. I think I told him, in the words practically as I have told this Committee to-day.

Q. Was there anything else you discussed with him? A. Not that I remember of.

Q. Did you discuss the appraised value? A. I don't think we did; no, for going value.

Q. You did discuss the going value with him to the extent that he said the seven and a half per cent. rate was allowed by Maltbie to cover the going value, and now that Commissioner Williams has found that there was no going value, he thought a seven per cent. rate was sufficient? A. Yes, sir; that is true; yes, sir.

Q. But you did not discuss the appraised value with him? A. I don't think I did; no, sir.

Q. Did you discuss with Commissioner Hayward the allowance for gas unaccounted for and lost in transmission or used for the company's own purposes? A. I don't seem to remember that we did. It is possible, but I don't remember it.

Q. Did you ever discuss that question of 14.3 per cent. allowed by Commissioner Williams for gas used and unaccounted for? A. That is the very same question. I don't remember that we did. I remember, as I recall it, that Commissioner Maltbie's allowance was eleven per cent.

Q. Do you know of any reason why it should have been increased to 13.3? A. It seems to me that is rather excessive, at the same time that is the evidence of the company's experience, and that was to some extent in this case justified, or admitted, rather, to be justified, by the evidence of one of the engineers which the company produced, Mr. Baer, a rather prominent gas engineer

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of Chicago, who, if you remember the minutes, went into a very long exposition of causes of gas unaccounted for.

Q. Did you call any witnesses to controvert that testimony? A. I did not.

Q. What was the testimony of the company as to the actual value of the property? A. Why, in this supplementary hearing, following the Court of Appeals decision, I don't think that the company contested the appraisal of the gas engineer of the Commission. I think they took his figures and made a different estimate of what they conceived to be the depreciation upon the property, and its present value.

Q. And allowed for additions, did they not? A. Yes, sir, and took the figures with additions, and the figures for the original appraisal, and, as I remember it, they were using the figures which Mr. Hine had prepared himself.

Q. The company was using the figures prepared by Mr. Hine? A. I think Mr. Baer's testimony was on figures prepared by Mr. Hine, as the basis for his assumption of depreciation and present value.

Q. Then there was no controversy between the company and you as representing the Commission on the subject of the appraised value? A. In this supplementary hearing, I should say not.

Q. Did you call any witness upon the hearing on the subject of the reasonable price of oil for gas manufacturing purposes? A. Simply the witnesses for the purpose of proving the existing contracts of other companies, as to what they paid for gas oil.

Q. Did you know of the fact that in the case of the Brooklyn Union Company, there had been a very large amount of money rebated to that company for the period of 1913 or 1914? A. No, sir, I did not. Do you mean did I know that their contract was cancelled?

Q. No, did you know that a very large sum of money was returned by the Standard Oil Company to the Brooklyn Union Company, upon the proposition that the oil delivered was of not as high a standard as called for by the contract? A. I did not.

Q. And for which a rebate was allowed? A. I did not.

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Chairman Thompson.— There was some money for that.

Q. Not all of it, but some of it was for that. A. I didn't know about that.

Q. Is it any part of your routine to examine reports filed by these various companies? A. No, sir, not of mine, but of the statistician's office, who has custody of those reports. They are accustomed to examine the reports and make up their sheets and exhibits on the reports and from the books of the company, and any other source which gives the information.

Q. And a report of a company containing the details of such a rebate would not necessarily in the usual course of business come to you? A. Not to me, no, sir. I am surprised, however, if it did exist that it was not called to my attention.

Q. Would you expect Dr. Weber or his department to call a fact of that character to your attention? A. I would.

Chairman Thompson.— This record of this big rebate of the Standard Oil Company, was not that well known down there in the Commission?

Mr. Semple.— I don't know.

Chairman Thompson.— Rather a startling thing, wasn't it, the Standard Oil Company, after a litigation with the gas company, would give them back seven hundred thousand dollars?

Mr. Semple.— It certainly would be startling.

Chairman Thompson.— Mr. Maltbie understood it and testified to it before this Committee.

Mr. Semple.— In 1914?

Chairman Thompson.— No, in the records of 1909.

Mr. Semple.— You said 1914 in your question.

Q. Do you remember of any such circumstance? A. No, sir.

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By Chairman Thompson:

Q. Didn't you know about this seven hundred thousand dollars before today? A. No, sir; today is the first I heard of it.

Q. Mr. Maltbie swore to it very readily, and when I asked Mr. Whitney for the document, he produced it very readily; wouldn't that be quite an essential fact for you to have in mind trying a gas case, where the company refused to give a market value and where they had an unusually high rate they paid for oil? A. If I had it in mind, I would have paid attention to it.

Q. That was a record of your Commission? A. It was not a record in my office.

Q. Do you mean you have a separate office? A. The Law Department has a separate set of offices.

Q. Don't one hand tell the other hand what is going on in that office? A. They are supposed to.

By Mr. Lewis:

Q. Do you know what this document is, or have you ever seen it before? A. I am not sure, Mr. Lewis, but I think that was one of the sheets which Dr. Weber's office had prepared in connection with a consideration of some of the questions of going value.

Q. You think this was prepared by Dr. Weber, do you? A. I think so, yes, sir.

Q. Was it in your possession, submitted to you at any time? A. I am not sure, but I think it may have been.

Q. It would have been pertinent on the question of going value, would it not? A. Yes, sir. That was apparently prepared, and I think there were a number of sheets at different times Dr. Weber had prepared on different theories, and articles in discussion of going values, and I am very sure that was one of them.

Q. Will you tell us whether this column, "Interest and dividends paid" actually represents the amount of money paid out of the treasury in interest and dividends, as you understand it, during the year 1911? A. I assume so, yes, sir.

Q. That is your understanding? A. That is my understanding, yes, sir.

Q. The bonded indebtedness at that time, 1911, was a million

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seven hundred and fifty thousand dollars, was it not, according to this schedule? A. I don't think that is what is meant.

Q. That is what I wanted to know. A. I think that this sheet was prepared to show, not the stock and bonds, but what, as far as we were able to find out, represented what the people who had gone into that enterprise had out of pocket paid into it. That is a quite different proposition from stock and bonds. That, I think, is a part of the consideration of the question as to whether or not there was any going value for which this company was entitled to have a return. My theory was that they were entitled to a return, a fair return, upon what they had out of their own pockets put into the enterprise, and I considered, and I insisted that that was the theory of the Court of Appeals decision.

Q. Then, in 1911, it was your understanding that there was a millon seven hundred and fifty thousand dollars had gone into the enterprise in cash, is that so? A. I should so understand from that sheet.

Q. According to the opinion as presented by Commissioner Williams for the approval of his colleagues, $2,066,000, as appearing in that table for 1914, represents, as you understand the situation, the amount that had actually gone into the enterprise? A. Mr. Lewis, I have never seen this until this moment. I should assume the first column under 1914, where it has the heading "Bonds outstanding during the year"—

Q. This is investment, and this is bonds outstanding, and they seem to be substantially the same down to that point? A. I don't know about that table, and I have never seen that table before.

Mr. Lewis offered a paper in evidence being in case No. 1273, which paper was received and marked Exhibit B of date December 7, 1915, and is as follows:

Statement setting forth, year by year, the investment, the computed fair return, the amount withdrawn from the property by the investors, in return on the basis of actual payment and without consideration of earnings not withdrawn in the form of interest and dividends.

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Kings County Lighting Company, Case No. 1273.

		Investment	7% return		Interest and dividends paid
1890	(Oct.)	$200,000	$4,500.00	(a)	$2,500.00
1891		600,000	42,000.00	(b)	20,000.00
1892		600,000	42,000.00	(c)	20,000.00
1893		600,000	42,000.00	(c)	27,050.00
1894		600,000	42,000.00		27,050.00
1895		600,000	42,000.00		27,050.00
1896		600,000	42,000.00		27,050.00
1897		600,000	42,000.00		27,050.00
1898		600,000	42,000.00		27,050.00
1899		600,000	42,000.00		27,050.00
1900		600,000	42,000.00		27,050.00
1901		890,000	62,300.00		41,550.00
1902		1,059,000	74,130.00		50,000.00
1903		1,059,000	74,130.00		50,000.00
1904		1,280,000	89,600.00		79,236.02
1905		1,280,000	89,600.00		115,650.71
1906		1,280,000	89,600.00		116,450.00
1907		1,550,000	108,500.00		156,350.00
1908		1,550,000	108,500.00		207,978.64
1909		1,750,000	122,500.00		251,816.67
1910		1,750,000	122,500.00		260,150.00
1911		1,750,000	122,500.00		260,150.00

(a) Interest at 5% on $200,000 bonds from October 1st.
(b) Interest at 5% on $400,000 bonds.
(c) Interest at 5% on $451,000 bonds outstanding. From 1893 to 1904 interest was paid on bonds outstanding to an amount below the investment by the sum of $59,000.

Senator Foley presiding.

Mr. Lewis.— I shall probably want to ask Mr. Semple some additional questions tomorrow, if it is convenient for him to come in here tomorrow.

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WILLIAM HAYWARD, recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Commissioner Hayward, you prepared an opinion in the Kings County Lighting Company case after you had seen the opinion of Commissioner Williams, the proposed decision of Commissioner Williams, did you not? A. Yes, sir.

Q. And did you discuss that opinion with anyone? A. Why, I had had some talk with Commissioner Williams about it prevously, but not to get down, as we say, to brass tacks, on it, and then I discussed it, I think, with my secretary, Mr. Clark, and then I started to prepare the opinion, and from time to time I was working on it there, I don't know how long, I think I talked to both Dr. Friedman and Mr. Semple, more with an idea to make sure I had not made a blunder on figures than anything else.

Q. Do you remember an occasion when Mr. Semple came to your offiee and spoke to you about the fact that you had prepared such an opinion? A. I remember talking to Mr. Semple during the preparation of the opinion.

Q. After the opinion was practically complete, if not entirely complete? A. I think more than once I spoke to him.

Q. Do you remember anything Mr. Semple said to you upon the subject of the preparation of the opinion by you? A. I remember Mr. Semple — Mr. Semple, after he read my opinion, said, "You are right," or words to that effect.

Q. What else did he say? A. I had this opinion, and I said that—either he had it or I had referred to it in some way, that I could not swallow the oil contract, or something like that. He said, "No, you are right, too," or words to that effect, and during the preparation of the opinion I spoke to Mr. Semple about it, and with that in mind, and I think all during the time I was working on it, I think Mr. Semple always expressed himself that I was sound on my deductions.

Q. Do you remember an occasion when Mr. Semple came to your office and congratulated you upon preparing this opinion? A. I think that was after the opinion was prepared.

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Q. Will you tell us just what he said in exact words, as you recall it? A. I do not know that I can, any more than I have.

Q. You have repeated what he said to others, have you not, before this? A. I don't know that I have.

Q. You have been quoted as having stated what Mr. Semple said to you. A. I don't have in mind what you mean now. I don't know who quoted me.

Q. Did Mr. Semple come into your office and say that he was glad somebody had the nerve to write an opinion for the eighty-five-cent rate and the oil contract was excessive and outrageous, or words to that effect? A. I think Mr. Semple said he was glad somebody had nerve enough to write an opinion and not take the oil contract. I don't know what else he said, except what I have told you.

Q. Did he say anything about a seven per cent. return in that conversation? A. He said a seven per cent. return in his opinion was sufficient. Mr. Semple and I both talked of the difference between our law requiring a fair return, our State law, and the rule of the United States — or, rather, the decision of the United States Supreme Court, which held that six per cent. was not confiscatory, and we both agreed, I am sure, that the two rules were not exactly the same, that is, that our Court of Appeals might upset a rate under our Public Service Commissions Law, that the United States Supreme Court would not upset under the confiscation clause of the Constitution, but Semple thought seven per cent. was enough, I know, and so did I. I think I have talked with Senator Foley that may be seven per cent. was too much.

Q. What I was interested in was getting all the conversation that you had. A. That is all that I can remember of the detail. I know Mr. Semple did say he was glad somebody had nerve enough to go through and approve the seven per cent., either actually in connection with my opinion, or in the course of its preparation, and did agree with me on the seven per cent. proposition, and he did agree with me on the oil contract.

Q. Did he say anything to you about his advice to Commissioner Williams having been disregarded? A. No, sir; I don't remember his having said that to me.

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Q. Anything along that line or that in substance? A. I think he explained about his memorandum that had been filed, and I think he said it had been predicated on the Commissioner's ideas of this matter.

Q. On whose ideas? A. Commissioner Williams' ideas, that had taken certain things to start with—he had taken certain things to start with, that is, a seven and a half per cent. rate, and the proposition, I think, just as Commissioner Williams expressed himself here, that here was a contract, and that in the absence of evidence showing it was lacking in bona fides, the Commission would have to respect it at least during the period of time it was to be in operation.

Q. You did not, did you? A. No, sir; I did not.

Q. And Mr. Semple did not? A. No, sir; Mr. Semple did not accept it. You see, Senator, the practice up there and the custom has always been, as I understand it, and I think it is correct, the statisticians and the experts and the counsel for the Commission and subordinates assist the commissioners in that way, given a state of fact, they will work out the figures. I asked for verification on my oil prices.

Q. Assume, then, that Commissioner Williams stated that he proposed to make a return of seven and a half per cent. on an appraised value—assume that Commissioner Williams were to state to Mr. Semple that he desired to justify a ninety-five cent rate, what instructions would he give, and would Mr. Semple carry them out? A. It never came to my personal knowledge that that was ever done in that way. I think it would be much more likely that a Commissioner would say to Mr. Friedman, or somebody, "Here is this case, basing it on a seven and a half per cent. rate of return, and basing it on twenty per cent. or something like that unaccounted for item of leakage of gas, or whatever it might be, and disregarding this and taking into consideration the other, I want you to tabulate these figures in such a way." I don't know.

Q. Did you ever see that document? (Showing witness Exhibit A of this date.) A. There were so many of those exhibits, I don't know. Let me look at it a moment. I think I have seen this.

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Q. Did you use that as a guide in any way in making your determination on the question of rate? A. No, sir, I don't think I did.

Q. It is a document in the case, isn't it? A. It may be one of the exhibits. It is Case No. 1273.

Q. It must have been before you, then, was it not? A. I presume it was. I know Mr. Hine disagreed with me on the case absolutely when it got to the end of it.

Q. What was his contention? A. His contention was that Commissioner Williams was right, and I was wrong.

Q. That seven and a half per cent. rate was justified? A. I don't know that we talked about that. He could not see how I was going to get back of the contract.

By Chairman Thompson:

Q. You have to depend, of course, for your information, in writing these decisions, on the testimony? A. Yes, sir.

Q. The testimony in reference to the oil contract was not very satisfactory, was it? A. I did not think it was, no, sir.

Q. And after reading all the testimony that was had there, you could hardly predicate a market value for oil, could you? A. No, sir.

Q. The practice in the Commission is you take one of the counsel to try the case, and he appears before the Commissioner who has charge of the case and tries that case, doesn't he? A. Yes, sir.

Q. And he is supposed to handle that case the same as if an attorney for a client in any other court? A. No, sir. The corporations object very strenuously to that, and they say counsel there are there to protect the interest of the company as much as the complainant. My idea has been different from some of the other commissioners. My idea has been, especially in the rate cases, that no one individual had the resources or could hire lawyers or experts sufficient to cope with a great company, and therefore it was the duty of the Public Service Commission experts and accountants to take the laboring oar wherever reasonably they could.

Q. It would not be the sitting commissioner's duty to go out of the way to get evidence to put in the record, it would be the

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counsel's duty, if anybody's, wouldn't it? A. I suppose so. I have tried to get evidence sometimes.

Q. Has that been the established policy, to allow the companies to come in and defend the rate cases and have them have their own staff of lawyers and half of the other lawyers on the other side, too? A. I don't know what has been the practice. In the rate cases I have heard, for instance, in the Brooklyn Edison case, Mr. Whitman, who was trying that case, has tried it, I think, very well, and I may say very vigorously, and I know it has brought forth very strenuous objections from Mr. Moran, appearing for the company, who maintained his attitude was all wrong so far as Whitman appeared, and then I have known, even in this Brooklyn Edison case, I have known Mr. Whitman to interpose objections to questions the complainant Moritz asked, and I have known Mr. Whitman to object to the introdution of that testimony.

Q. The question that you should have before you is to elucidate the facts and get them on the record, anything that is material. A. The law says it is an investigation.

Q. And whatever facts are necessary should be elucidated on the record? A. Yes, sir.

Q. And that is the duty of the commission and counsel? A. Yes, sir.

Q. And if you take up a question of an oil contract, don't you think that phase should be carried to a final conclusion so far as practicable? A. Yes, sir; I should say so.

Q. So you could tell the market price, or find out why you couldn't, isn't that so? A. I should think so. I think that is a fair statement of it.

By Mr. Lewis:

Q. Have you told everything you remember of as to what Mr. Semple said to you upon the occasion referred to? A. Everything I recall. I don't pretend to say that is all that was said. That is all I recollect. I perhaps used sometimes less than some of the others did in preparation of some of these things.

Q. Do you recall that he did say that he was glad somebody had the nerve to write an opinion based on an 80 and 85-cent rate, disregarding the oil contract? A. Yes, sir; I know he was gratified and glad.

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Q. He said that, didn't he? A. Yes, sir.

Q. Didn't he say in words or substance that the work he did in connection with that matter was done under Commissioner Williams' direction, and that he was instructed to prepare an opinion that would justify a ninety-cent rate? A. I don't think he did. I don't remember that he did. My recollection would be more that he said that the memorandum that he had prepared for Commissioner Williams was prepared after he was given certain definite propositions to start with, as to the amount of the rate, and the question of leakage, perhaps, and the question of this oil contract, and the going value, and to say he said he was told to work out a 95-cent rate, if he ever said anything like that to me I don't remember it, although I would not deny he said it. I don't think he did.

Q. But he did say he was instructed to prepare an opinion based upon the oil contract and based upon a 14.3 per cent. loss and based upon a seven and a half per cent. return, and based upon a three million fifty thousand dollar appraised valuation, did he? A. That is my recollection, if that is the percentage of loss that was taken. I took Commissioner Maltbie's old percentage in the original case on that, on the theory there had not been any evidence to upset Commissioner Maltbie's determination.

Senator Foley.—The committee stands adjourned until tomorrow morning at 11 o'clock.

Whereupon, at 5:05 o'clock P. M., an adjournment was duly taken to 11 o'clock A. M., Wednesday, December 8, 1915, at the same place.

DECEMBER 8, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The committee was called to order, pursuant to adjournment, at 11 o'clock A. M., Chairman Thompson presiding.

Chairman Thompson.— The committee will come to order, and we will proceed. I understand that this morning we set apart a

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little time to hear some people from Queens county who do not quite agree with some of the provisions of the Public Service Law, and we will ask Assemblyman Polhemus to take charge of the matter and present such matters to the committee as he desires, he having asked for this time, if that is agreeable to counsel.

Mr. Lewis.— Entirely.

Mr. Polhemus.— The purpose of this hearing is to offer some suggestions as to the amendment of the Public Service Commissions Law, not only for the benefit of Queens county but in some ways which the people of Queens county think will benefit the whole city. I wish to introduce Judge Kennedy, William E. Kennedy, of 96 Hardenbrook avenue, Jamaica Municipal Court Judge.

Judge Kennedy.— I come here this morning as the president of the Jamaica Citizens' Association, simply in that capacity. I come simply as the president of the Jamaica Citizens' Association, and there are several matters which we deem important. I am simply going to touch on one of those questions myself, and the other members of the committee will deal with the others.

It is the law today that where matters affecting Queens county come before the Public Service Commission and those matters are appealed from, that they go to the First Department of the Supreme Court, Appellate Division, and it seems to me that there is no plausible reason why these matters which affect the Second Department should be heard by the judges of the First Department or why they should not be heard by the judges of the Second Department of the Appellate Division. We have had several matters. Not that I have at this time any matter in mind as to which there was a wrongful decision rendered, but it seems that these affairs should be decided upon by men who live within the jurisdiction of the limits of the Second Department.

Chairman Thompson.— You come within the jurisdiction of the First District Commission?

Judge Kennedy.— Yes.

Chairman Thompson.— And you are also within the jurisdiction of the Second Appellate Division?

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Judge Kennedy.— Yes.

Chairman Thompson.— But appeals from a decision of the Public Service Commission affecting your locality go to the first department, Appellate Division?

Judge Kennedy.— Yes, sir.

Chairman Thompson.— Is that because of the provisions of the Public Service Law?

Judge Kennedy.— Either that, or the commission's sitting in New York city, and it is within the jurisdiction of the First Department. You men can realize the importance of this question. There are at times matters of vital importance which come before the Public Service Commission and which would naturally be more likely to be familiar with — or, the judges of the Second Department, would be more likely to be familiar with those questions, not that I want to burden our Second Department with any more work, but I believe that it should be done by law, having everything equal, that the Second Department should pass on these questions.

I am simply stating this fact to you men, and will leave this matter within your hands, as the only question I will take up this morning. I thank you.

Chairman Thompson.— That will have consideration.

Assemblyman Polhemus.— I want to introduce Mr. John Adicks, and I think Mr. Adicks, it is safe to say, more than any other man not in public life, or associated in any way with any of the public utility corporations, is familiar with the transit conditions in New York, and he has made a complete and exhaustive study of the situation, and he has some representations to make to your committee.

I take pleasure in introducing to you Mr. Adicks, Mr. John Adicks, of 211 Fulton street, Jamaica.

Mr. Adicks.— I might say, as a citizen who has some interest in Queens, and also as I served as a member of the committee appointed by our late Mayor Gaynor to take up the matters of relieving congestion in the borough of Manhattan, and while serving

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on that committee I made certain observations that have always appealed to me to be important. Among others is the fact that while the city of New York today is groaning at investing a hundred and sixty million dollars for transit, there are many portions of the city that are still without transit and will be without facilities, notwithstanding this vast amount of money is to be spent, and the city financially cannot put much more money into it. The original Rapid Transit Commission was formed to relieve congestion in Manhattan. At that time the city of New York comprised Manhattan and the Bronx only, and their aim was to relieve congestion in Manhattan, but in trying to relieve that, they made extensions in other ways and took in territory that has by reason of that transit become very valuable, but at the same time it did not allow the man of moderate means to get homes because values increased so rapidly.

Then, when what is known now as the Public Service Commissions Law went into effect in place of the former Rapid Transit Commissions Law, the city had been enlarged and consolidated, and Queens and Brooklyn and Richmond was consolidated and the new commission in laying out their lines went south, north and south, leaving out going east. I say leaving out, the plan that was prepared by the first commission provided only for about three miles eastwardly in the city of Brooklyn, out on Lafayette avenue and Broadway. They did not even consider the use of the Queensboro bridge.

I am not calling attention to this to criticize the commission, but the fact that they were not familiar with the needs at the time. Then when the plan went before the Board of Estimate and Apportionment, as a representative of Queens, as one of the committee representing Queens, we called attention to the fact that although the Queensboro bridge had been built at an expense of twenty millions of dollars, the plans known as the Tri-Borough route did not provide for any extension to the Borough of Queens.

At that time the Board of Estimate and Apportionment said, "We are going to give some relief by making use of the Belmont Tube." That was about 1911, but the Belmont Tube was not put in use until June of this year. Through the efforts of the Board

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of Estimate, what is known as the dual system was worked out, which does give Queens a share of the benefits and certain other sections of Brooklyn which were not included in the original plan, but other sections of Queens and other sections of the Bronx and also Richmond, are not helped at this time, and by reason of the financial condition of the city, I do not see how they can be helped, if they have to build subway or elevated lines, but they could be helped if the Public Service Commission had authority to build or order the building of trolley lines or have the authority to lease the trolley lines that are now built. For instance, what is known as the Liberty avenue line in Queens runs out two miles in Queens, and in that section there is a part of the borough of Queens that has a great many people who have built little homes and who are paying for them on the installment plan, and if there was an extension from that, with a transfer to the trolley lines that are now operating under the five-cent fare, it would give them the same benefit that the section up in Washington Heights gets for a five-cent fare.

I believe originally the mistake was made, and it is too late now to carry it out, and that was that where these subways or elevated lines were to go, as it benefited the property, there should have been a certain portion of it made an assessment.

While I live in Queens, I realize that there are certain sections of Manhattan and certain sections of Brooklyn that values have decreased by reason of opening up the new sections, and it would have been but fair to Manhattan, and some one who had property in the Bronx or Queens or Richmond or Brooklyn, in the outlying sections, who was made a beneficiary from the extension of those lines, if they could have paid an assessment, but unfortunately that was not thought of, and it is too late now, because it would be unfair to those sections that have not had the share of the benefits to insist that they should pay a benefit now, except where they had insisted upon having a subway where there is now perhaps an elevated or a trolley line. If they insist upon getting subways, it is but fair that they should pay a share.

There could money be saved if the commission had this authority, for instance, on Jerome avenue they are building an elevated line that will run out very close to the Westchester county line;

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White Plains avenue there is an elevated going right up to Mount Vernon, which will develop Mount Vernon to the expense of the city of New York. Eastwardly, the furthest any line goes is about seven or eight miles, so a large portion of the city itself will not get the benefit it ought to get by reason of the elevated lines running northwardly to Mount Vernon, and the city of Yonkers, but if the commission had that authority, to order the building of trolley lines with transfers to the city for a five-cent fare, all the sections of the city would get a share of the benefits, and for that reason we would like to have you consider giving authority to the Public Service Commission to order extensions by trolley or authority to lease suburban trolley lines.

Assemblyman Callahan presiding.

Mr. Adicks.— There is another feature we might bring to your attention, and that is at present the Public Service Law. The commission has authority to pass only upon the necessity and convenience, I believe the law reads, in trolley lines, on city streets. We have had quite an experience in the borough of Queens in regard to that matter. About eight years ago the Brooklyn Rapid Transit Company made an application for the extension of a trolley line on Metropolitan avenue to connect with Jamaica avenue, which would be about a three mile run, with a transfer to their elevated system which would take us from Jamaica to New York City Hall for a five-cent fare. We now have that on Jamaica avenue, but it is congested, and in fact the statistics show from the files of the Public Service Commission that the Jamaica avenue trolley line which gives this transfer, is carrying 72 per cent, as many passengers as the three lines of the Bronx on which elevated lines have been authorized, that is, the Jerome avenue line, White Plains avenue, and the Westchester avenue line.

This application of the B. R. T. Company was in the hands of the Franchise Bureau from that time until this spring, and by the efforts of a committee it was finally worked out, and the amount in dispute, as shown by a letter from one of the Franchise Committee of the Board of Estimate, was twenty dollars a year. The B. R. T. refused to accept the terms, as it made a precedent. They said that they would not accept it under the terms the

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Franchise Bureau of the Board of Estimate insisted upon, but we finally convinced the members of the Franchise Committee of the Board of Estimate, that we were entitled to that, as it would save the city expending at least from five hundred thousand dollars to a million dollars if they did not have to build an extension of their, what is known as the Fourteenth street line, which goes under the East river at Fourteenth street, and out to East New York, and this Fourteenth street trolley line would take the place of an extension that we would be entitled to have.

I might say that this section is within five or six miles of the congested district of Manhattan. It is entirely farm land yet, and a wage earner in New York, if proper transit facilities, could go out there and buy lots for less than a thousand dollars a lot. I am speaking of the districts that are close to Manhattan. Further out, if this plan was worked out, and the trolley line extensions, the wage-earner in Manhattan could go out in sections of the Bronx, Brooklyn and Queens and buy lots for less than five hundred dollars a lot, and it would enable them to get homes and many of them now paying a ten-cent fare, and go out and have homes of their own, and they would then be able to bring up their families where they would have light and air, which I think is a very important thing.

Assemblyman Callahan.— Is it your idea the Legislature ought to give the Public Service Commission the right to compel these transfers?

Mr. Adicks.— Yes, so the city would not have to invest the money necessary to build elevated and subway lines. It would serve the purpose fully as well, and two-track trolley lines on public streets can be built, I am told, at an expense of fifty thousand dollars. The surface line is cheaper and a lower investment.

Under the dual system the commission has authority in the contract to order extensions of any of those systems, but a deficit, if any, is made up by the city. Of course an elevated line that would cost from three hundred and fifty to four hundred thousand dollars, there would be more of a deficit than if a trolley line with a transfer.

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Senator Lawson presiding.

Mr. Adicks (Continuing).— That would enable the wage-earner to get a home with a five-cent fare in the suburban section.

I was speaking of the particular franchise on Metropolitan avenue. We finally showed the Board of Estimate that the city was losing money by not giving that line, and the fact of it was if the trolley line was allowed to be built, it would make residence property, and the increase in assessments would be very much more than what the difference was, and, as we understood, it was quite an amount, but it finally developed that the amount was only twenty dollars a year. However, the Board of Estimate and Apportionment passed the resolution authorizing the Mayor to grant that franchise on the 26th of August of this year. By the way, it is in the hands of the Mayor yet, and we have several times called his attention to it, and he has promised to get at it as soon as possible, and we think it would be well for this commission to have authority to order these extensions of trolley lines on city streets. As it is now, the Franchise Bureau of the city, having charge of all franchises, all street franchises, the Public Service Commission on one hand having authority in regard to subways and elevated lines, and only having authority to pass upon the convenience and necessity of trolley lines, it makes it, I think, poor business for two bodies to have that matter, and it occurred to me you might consider the question of letting the Public Service Commission have charge of the franchises in regard to transit.

Senator Lawson.— How would that conflict with the so-called demand for home rule? You take away the right as to franchises from the Board of Estimate and Apportionment, and give it to the Public Service Commission, wouldn't there be a conflict there?

Mr. Adicks.— It certainly would not be a question of interfering with home rule scheme.

Senator Lawson.— It is a State body, though.

Mr. Adicks.— Technically, yes. I know that, but I do not think it interferes, and it is a proper thing, it seems to me, and it ought to be considered.

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We do not wish to criticize the Board of Estimate and Apportionment, but the Mayor has had this in his office since the 26th of August and not passed upon, and it has been before the Franchise Bureau for eight years, and the people of Queens in the meantime suffering, and it occurred to us that it is a matter you might consider. We do not say it is a proper thing to do yet, but we bring the matters before you for your attention.

Senator Lawson.— In other words, you want some power to compel the city authorities whom you do not deem responsive enough to the demands of the citizens, to act, and your suggestion is to give the power to the State Board to compel the city board to act. Is that it?

Mr. Adicks.— My idea is that the commission be given power to study and consider and have authority to order trolley lines as well as to state that they are convenient and necessary. They pass upon whether convenient and necessary, but no power to order them.

Mr. Lewis.— That would involve an expenditure of city money, would it not?

Mr. Adicks.— If the city built them.

Mr. Lewis.— The city would have to build them if they were ordered by the Public Service Commission, would they not? The Public Service Commission would have no jurisdiction to compel the investment of private capital in the construction of trolley lines?

Mr. Adicks.— They could make the terms, as it is now.

Mr. Lewis.— They have the right now, haven't they?

Mr. Adicks.— No, sir. The Franchise Bureau of the Board of Estimate fixes the terms. The Franchise Bureau of the Board of Estimate has adopted what they call their standard form of franchise, that this should apply to all lines within the Greater City. It was a matter that was thrashed out in Mayor Gaynor's time. There was a line we needed in Queens very bad, what is now known as the Manhattan-Queens line. Probably that is better

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known as the Robbin line, known then as the South Shore Traction Company. They made an application about 1908 for a franchise from Second avenue and 59th street in Manhattan, over the 59th street bridge to the Borough of Queens to the city line, all together some fourteen miles, in which they agreed to carry us for a five-cent fare. They applied to the Board of Estimate and Apportionment and made application to the Public Service Commission, and the Public Service Commission passed upon the convenience and necessity and approved of it, and the Board of Estimate referred it to its Franchise Bureau in regard to the terms, and they insisted that the same terms should apply — the same terms as was made for the sections within either Manhattan or the Bronx. We called attention to the fact that this line was carrying us through an undeveloped territory, a large portion of it, for five-cent fare, but the Franchise Bureau said, "It makes no difference, we have a standard form," and we finally got a public hearing before the Board of Estimate, and I might say that was at the time that Mayor McClellan was mayor, and I was a member of the committee that attended there. I remember well the question that President McGowan asked of a representative of the Citizens' Union, who opposed the modification of the franchise. He said,

> "Do I understand you to take the ground that we should insist upon the same terms for a line that is to be built and go through fourteen miles of undeveloped territory in Queens, that we should insist that they should have to pay the same terms as a line that may apply and should want a franchise for Broadway?"

and he said, "We certainly do," and President McGowan said, "We will not do it that way," and they did modify the franchise, but the Citizens' Union carried it to the Court of Appeals and delayed us getting that trolley line, and we did not get it into operation until 1912 or 1913. The Franchise Bureau, acting for what they consider the city's interest, it seems differs from the Public Service Commission, notwithstanding the Public Service Commission sees the necessity, but the Franchise Bureau insists upon terms that are not fair for trolleys in the undeveloped section.

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To digress a little, I might call attention to the fact that it is very hard to get trolley lines, or get corporations to build trolley lines in the new sections by reason of this transfer law. For instance, the B. R. T. now gives us service in the south half of the Borough of Queens, and when we asked for an extension, they frankly told us it wouldn't pay.

Senator Lawson.—What would be your concrete suggestion voicing the sentiments of the people of Queens, recommending that this committee do to relieve that situation, and the committee can consider it?

Mr. Adicks.— That they consider giving authority to the Public Service Commission to have the right and authority to lease trolley lines that are now built and in operation and for those lines to be a part of the city system, and to transfer to the elevated where they may meet it, for instance, in Flushing.

There is now under contemplation the proposed leasing of a portion of the Long Island road. They are exacting terms that the city cannot see its way clear to pay them. That was under a special act. If the city had authority to say to the Long Island road, "We will lease the trolley lines which go through the same territory, and which are not paying the trolley company," and we will get the same result for a five-cent fare with a transfer to the elevated system, the city system, and it will simply be that the people have a little inconvenience of having to change cars, but they would have this club to use against the Long Island road, and it would serve a large section of the Third Ward of the Borough of Queens on the south side. The line just built, known as the Liberty avenue line, which terminates at Leavits avenue, there is a trolley line underneath operated by what is known as the New York and Queens system, but half the stock is owned by the Long Island road. They do not give proper service, and they want to get rid of it. If the city had authority to lease that line, and could transfer from their elevated system to that line, it would give the Fourth Ward a share of the benefits.

There is another line known as the Freeport trolley which could be utilized and that would save the city building the elevated and subway lines which are so costly, and the men in the congested districts would get a share of the benefits.

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Our association has gone on record as feeling that all Long Island should be in the First District. That is for you to consider. We have also gone on record as feeling that the telephones of this section should be in the First District. I might give you a little illustration of how that works out. We are a part of the city of New York.

Senator Lawson.— The committee is now considering that.

Mr. Adicks.— To show you simply that we in Queens are part of the city of New York, but they give a local rate up to the Westchester county line, fifteen miles north and south, and when it comes to going into Queens, and we are only eight miles from the central portion, they put a limit, part in the local zone, the Long Island City, but the remainder is put in the other zone, which we call discrimination.

There is another matter, and that is the question of representation on this commission. We think, from our experience, it is but fair that each Borough should have a representative. The first commission worked out what is known as the tri-borough plan, ignoring two boroughs, both Queens and Richmond. It might be said that Queens and Richmond cannot expect, but they are not the only ones interested. The wage-earner in the districts that wants to get a home has an interest in it, and it ought to be so he has a chance to get a home while the land is still at a moderate price.

While serving on that committee, what is known as the amendment to the Taxation Law was passed, which it is said — perhaps you have met Mr. Marsh before your legislative body, stating that that committee voted in favor of what is known as the change in taxation that would provide land should pay twice as much. I might say, as one of that committee, that only four out of nine on the Taxation Committee voted in favor of that, but it was at a meeting that the full board was not present at, so they did not get a majority vote of that committee on taxation. In referring to that, I have this in mind, that committee did make this recommendation, which Secretary Marsh, I am sorry to say, did not see fit to bring before the legislative body. We recommended what I am presenting to you today, that the Public Service Commissions

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Law should be so amended that trolley extension service should go through the entire city, and the wage-earner who was willing to give a little more time on the road could go out and get a five-cent fare. It was simply increasing taxation on the land without increasing the transit facilities, which would benefit the wage-earner, I think.

It might be fair that the suburban boroughs, by reason of their assessments and values not being equal in percentage valuation, should not have an equal vote. It might be based on something of the method of the Board of Estimate, for instance, as Manhattan and Brooklyn are the heavily assessed boroughs, they might each have two votes, while the Bronx, Queens and Richmond would each be entitled to one vote by their representatives. We think that could be considered by your body. I thank you.

Assemblyman Polhemus.— I wish to introduce Thomas F. Tevlin, Butler Building, Jamaica, N. Y.

Mr. Thomas F. Tevlin.— Mr. Chairman, I won't keep you but a moment. I do not know as there is anything I can say in addition to what has been said, but I would like to emphasize the recommendation that Queens have a recognition on the Board of Public Service Commissioners, and for many, many reasons, perhaps, Senators and gentlemen, you know without my going into it minutely, and second, whatever questions arise in the territory of New York, Queens, Kings, and so forth, come under the supervision and jurisdiction of the commissioners of this department, and not be compelled, as we are now, in the telephone question and Long Island Railroad in Queens county where we have to go before the commission up-state to have our claims adjudicated, and, third, I believe there was some testimony before your committee some time ago by some of the commissioners showing how unfamiliar they were with Queens county. We have a place on Washington street where four or five railroads come in, and there is one imperative and important reason why we should have a representative, about the waiting room. We should have a man that knows and is familiar with every part of our district and give us everything we need. We need a waiting room. Go out there some cold

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night and you will see the women and children sitting there. Go out tonight.

Mr. Lewis.— Have complaints been made to the up-state commission?

Mr. Tevlin.— Complaint after complaint, and they testified they did not know anything about it. We have had complaint after complaint. There are women and children waiting there and the cars running under twenty-minute headway.

Senator Lawson.— This committee will give every possible consideration to the recommendation made by the representatives of Queens, and if it is possible to give the representatives of Queens the relief that they request, I assure you that this committee will endeavor to give it, to the best of its ability.

Assemblyman Polhemus.— Mr. Higbie and Mr. McGuire were unable to stay.

Senator Lawson.— I think we understand what Queens wants, and I want to assure you that this committee will do all it can to relieve the situation there.

Mr. Adicks.— There is a fact, and that is that New Jersey, by reason of its lower fare and giving better conveniences, is competing for that part of Manhattan where the wage-earners go out, where we in Queens should have it.

Assemblyman Polhemus.— Most of these recommendations are not only for the benefit of Queens, but will apply to the whole city alike. We think we are working for the better operation of the Public Service Commissions Law, and not only for the betterment of the Borough of Queens, but for the whole of the Greater City.

Senator Lawson.— We will now take an elastic recess, and reconvene at the call of the chair.

(The committee continued in recess for some time, and until 1 o'clock P. M., at which time a recess was taken to 2 o'clock P. M.)

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AFTERNOON SESSION

The committee continued in recess until 5:20 o'clock P. M., at which time it was called to order, Chairman Thompson presiding.

WILLIAM C. BANKS, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Banks, you were sworn yesterday, were you not? A. I was sworn several days ago, I believe on Saturday.

Q. You were a witness here previously? A. Yes, sir.

Q. At that time, you were examined about the stock transaction, if I remember right, were you? A. Yes, sir. I would like to make a statement here. I said yesterday it was June 14, or June 2d, 1915. That should have been June 2d, 1914, when that happened. It was June, 1914. Our books show all of that.

Q. What was that capital stock that you bought? A. It was a thousand dollars, forty shares at twenty-five dollars per share, representing one thousand dollars.

Q. Of what company? A. Northwestern Construction Company.

Q. What was the business of that company? A. Manufacturing and selling general railway and electrical supplies.

Q. Where was it located? A. Originally at 50 Church street, and afterwards at 30 Church street.

Q. What was the nature of the supplies? A. Why, at the start off, batteries and battery supplies for operating of automatic signals.

Q. Dealing with signal companies largely? A. No, sir; mostly railroad companies, very few signal companies.

Q. Any signal companies? A. Why, yes, I might say the Union Switch and Signal Company.

Q. Where is that located? A. They have their general purchasing office at Swissvale, Pennsylvania, near Pittsburgh.

Q. Are you acquainted with the officers of that company pretty well? A. I was at that time.

Q. Who were they? A. I believe Colonel Prout was president.

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Chairman Thompson.—What is his first name?

Mr. Banks.—I couldn't tell you.

Q. Is he president now? A. I don't think he is.

Q. How long since he ceased to be president? A. I couldn't tell you that off hand, I don't know.

Q. Was it within a year or five years? A. I think he ceased to be president about the fall of 1914.

Q. About the time that company was bidding on the signal contract with the B. R. T.? A. I don't know about that.

Q. It was about the time of that? A. I don't know.

Q. Don't you know about when that was let? A. No, sir.

Q. Did you ever hear about it? A. I read about it.

Q. When was that? A. About that time, I think.

Chairman Thompson.—Let me caution you. Most of these witnesses in this matter come here with a growing memory. Shoot it out and let us know.

Mr. Banks.—The only thing I know about the signal contract at that time, I followed the papers.

Chairman Thompson.—Yes, you do; tell us what you know.

Mr. Banks.—That is about all.

Chairman Thompson.—Well, tell it all.

Q. That was Prout, and he was president then, was he? A. I think he was.

Q. Did you meet him frequently? A. I never knew him.

Q. Did you ever talk with him at all? A. Not to my knowledge, and never met him.

Q. On the telephone or otherwise? A. Absolutely no.

Q. Any other man by the name of Prout that you know of? A. No, sir.

Q. Never met him? A. No, sir; never met Prout. I know Sydney Johnson, but I don't know Prout. I know Prout by name only and never talked with Prout.

Q. Did you know when he resigned? A. No, sir.

Chairman Thompson.—What Prout was it you sent word to last night that you were going to meet him?

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Mr. Banks.—I was going to meet Colonel Prout?

Chairman Thompson.—Yes, you sent word and told them to notify Prout's office; what Prout did you mean?

Mr. Banks.—I didn't mention Prout's name—Hoff's office. I told my man, and told him to tell them I couldn't be there.

Chairman Thompson.—It sounded like Prout to me.

Mr. Banks.—No, sir; I never met Prout.

Q. What other officer did you know of that company? A. Sydney Johnson, general sales manager.

Q. Vice-president, too? A. I don't know whether he was vice-president; I couldn't tell you.

Q. How long have you known him? A. About twenty years.

Q. Whereabouts? A. All over the country.

Q. Where was his home? A. He lived in New Jersey.

Q. What town? A. I think somewhere near Rahway.

Q. Ever over to his place? A. No, sir.

Q. Where did you usually see him? A. 30 Church street and around the street.

Q. Did he have an office here? A. Yes, sir, 30 Church street, Hudson Terminal Building.

Q. He was engaged in negotiating contracts for signalling devices? A. Yes, sir; that is his business.

Q. Did you have dealings with him as to getting business for batteries? A. Yes, sir; I would see him.

Q. When was that? A. 1912 and 1913 and up to the time he left.

Q. For what company? A. Union Switch and Signal Company.

Q. For what company? A. Northwestern Construction Company.

Q. That was before the stock was transferred to you? A. Yes, sir.

Q. Were you employed by that company? A. Yes, sir.

Q. In what capacity? A. Electrical engineer.

Q. Are you an electrical engineer? A. Yes, sir.

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Q. What school did you graduate from? A. Mostly high school, and my own education.

Q. Did you ever take a course in electrical engineering? A. No, sir; not any particular course. I went to Cooper Institute for a while.

Q. How long ago? A. Twenty-two, or twenty-one, or twenty years ago.

Q. How long have you held yourself out as an electrical engineer? A. Ever since I have been in that electrical business, and developed and designed a good many things.

Q. How long have you known Commissioner Wood? A. About fifteen or sixteen years.

Q. How intimately have you known him? A. Intimately enough to be associated with him in business with the Northwestern Construction Company.

Q. You were employed by that company? A. Yes, sir.

Q. How many years have you been employed by that company? A. About three and a half to four years.

Q. Were you a stockholder at any time? A. No, sir.

Q. Who owns the stock of the company? Do you know? A. Mr. Wood, I believe.

Q. All of it? A. I think he did.

Q. Who owns it now? A. The name of my brother-in-law and myself.

Q. Who owns it? A. My brother-in-law, H. R. West.

Q. How long has he owned it? A. Ever since June 2d, 1914.

Q. And from whom did he acquire it? A. From P. Erskine Wood.

Q. Who is he? A. Brother of Robert C. Wood.

Q. When did Peter Erskine get it? A. According to the —

Q. Do you know? A. I don't know, no, sir, when he got it, but except the dates in the certificate is all, the transfer date, that is all I got.

Q. You knew Commissioner Wood before he became Public Service Commissioner? A. Yes, sir.

Q. What was his business activity during the period prior to his going into the Public Service Commission? A. In the Northwestern Construction.

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Q. Was he engaged in that alone? A. No, sir, he had an office at 43 Exchange place, a brokerage concern.

Q. Stock brokerage? A. Yes, sir; or investment securities. I couldn't tell what his business was. It was hard to find out what his business was.

Q. Were you ever in his office there? A. Yes, sir.

Q. Did he transact an electrical supply business there? A. No, sir.

Q. Didn't have any electrical supplies there? A. No, sir.

Q. Where was the electrical supply company office? A. 30 Church street.

Q. He had two offices? A. Yes, sir.

Q. Spent part of the time in one and part in the other? A. Be back and forth quite often during the day.

Q. What companies did you deal with when you were representing Mr. Wood's company as a salesman? A. Well, there was the Erie Railroad, New York Central Railroad, the Pennsylvania Railroad, the Interborough, the New York and Queens County, the International Railway of Buffalo, the Long Island Railroad, and various other roads.

Q. Any other New York city road? A. Interborough and Third Avenue and Union.

Q. Any others? A. Well, there might be some, I don't remember.

Q. What are they? A. That is about all, I guess, in the railroad line.

Chairman Thompson.—You ought to have a good deal of business out of them.

Mr. Banks.—We had a lot of them on the books, but some of them didn't amount to much.

Chairman Thompson.—Who was the best customer?

Mr. Banks.—I couldn't say that. The books show that. I couldn't say, off hand.

Q. Tell me what you mean by your statement that you had a lot of them on the books, but some of them didn't amount to much?

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A. Didn't get much business out of them, spent money on them, and didn't get business, and they were a loss on them.

Chairman Thompson.—Mention them.

Mr. Banks.—The New York Central business was very poor. The Pennsylvania didn't amount to anything, and the Lackawanna we never got anything from only a few sample orders.

Chairman Thompson.—Any others?

Mr. Banks.—Third Avenue didn't amount to anything. Union Railway was pretty fair.

Chairman Thompson.—Those railroads in the city were all good accounts, weren't they; all of those within the jurisdiction of the First District Commission, and those outside were not so good?

Mr. Banks.—Long Island was very good, and that is outside of the jurisdiction of the First District.

Q. What do you mean by a good account? A. An account profitable on the books.

Q. How much business did you have to do to make it profitable? A. That depends on the line of business, where you buy the material from, and how big a margin you have to work on. The majority of that business the Northwestern had at that time was a loss, and they were losing money.

Q. You haven't mentioned the Interborough, I notice. A. The Interborough was very poor.

Chairman Thompson.—What time do you mean?

Mr. Banks.—The Northwestern Construction Company, prior to his going on the Public Service Commission.

Chairman Thompson.—Since that time on, their account has been pretty good, has it?

Mr. Banks.—There was some of them, yes, sir.

Chairman Thompson.—Run how much a month?

Mr. Banks.—The Interborough?

Chairman Thompson.—Yes.

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Mr. Banks.—Fifteen hundred dollars, or two thousand dollars a month, and some months less than five hundred dollars.

Chairman Thompson.—What month was it less than five hundred?

Mr. Banks.—The last two or three months.

Chairman Thompson.—Since this committee has been in New York?

Mr. Banks.—I don't think the committee had anything to do with it. If it has, I am sorry.

Chairman Thompson.—It was good business from the time Wood went on the commission down to two or three months ago, wasn't it?

Mr. Banks.—Why, I might say fair business, but it wasn't all the business we had.

Q. Better than it had been prior to the time he went on the commission, wasn't it? A. Yes, sir; it was.

Q. Did you have any business in any other state outside of New York State? A. Why, no.

Q. Did you have any Kansas business? A. No, sir.

Q. Did you know of any Kansas business Mr. Wood did? A. Mr. Wood, I see this in the paper, got a commission for retaining fee for putting a signal proposition across there. I was the one introduced Mr. Wood to Mr. Johnson, who, in turn, I guess, introduced him to Colonel Prout. Mr. Wood put that across some way for them, and they wanted signals.

Q. What company was that? A. Union Switch and Signal.

Q. What railroad company was it? A. Kansas City, Clay County and St. Joseph, I think, some such name.

Chairman Thompson.—Do you think it is possible Wood forgot that deal he had with the Union Switch and Signal Company?

Mr. Banks.—He has a whole lot of things on his mind just now. He might have.

Q. You did not forget it, did you? A. I saw it in the paper. I never knew they put signals on until I saw the paper.

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Q. Do you think you got a square deal from Wood on that? A. According to the paper reports, I was the one introduced him to the signal company and Mr. Sydney Johnson, the sales manager, and he was desirous of selling signals, and I should think I might have got something for that introduction.

Q. But you didn't? A. No, sir; I didn't.

Q. What was your idea in introducing Mr. Wood to Mr. Johnson? A. He is not with the firm now. He is with a competing firm, I believe, doing business in Rochester, now, and I haven't seen him only once or twice since he has been with that concern, at 30 Church street.

Q. What was your idea in introducing Wood to him? A. Wood came to me and said he knew a street railway or interurban road, wanted to put in some signals.

Q. Did he tell you what road it was? A. No, sir, he didn't mention any road at that time.

Q. That was while you were in his employ? A. Yes, sir, and he wanted to know who was a good concern to go to on that proposition, and at the same time wanted to know if we could sell that signal company some material we were manufacturing in exchange for putting them next to a contract, and I never sold them anything that I know of. The first I knew of it I read it in the paper.

Q. What reason have you for refusing to allow Mr. Morse to have access to your books and give him any explanation of the entries? A. I have not refused him access to the books.

Q. You refused to give him explanation of the entry? A. There are some entries I can't remember. I spend considerable money going out entertaining people, and I couldn't remember the account.

Chairman Thompson.—Entertaining people, what do you mean?

Mr. Banks.—Some railroad people have pretty good appetites and they can drink like fishes. They come up and say, "Give us a half dozen bottles of wine," and hand the check to me, and I pay it. I might be soft and I like to do it. And they say, "Bill Banks is a good fellow."

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Chairman Thompson.—Does Wood ever come across in that way?

Mr. Banks.—Yes, sir; he is very liberal, and he has taken a lot of baseball players and dined them. I think he pays four or five hundred dollars a year for a diamond.

Chairman Thompson.—I understand he is an expert on sliding to first base.

Mr. Banks.— He can slide head first to first base.

Q. You have an account on your ledger, Folio 135, which is headed "Commission;" what does that mean? A. That is money probably I received —

Q. It is not probably I want. A. I have got the money and probably given it to somebody or spent it or did something with it. Who I gave it to I can't remember.

Q. Where does the money come from that goes into that account? A. From profits.

Q. Of the concern? A. Profits and loss both, sometimes.

Q. You don't get money from a loss? A. No, sir; but we have a profit and loss account. I was trying to figure out what they were.

Q. What do you mean by that? A. We paid money to certain people for getting certain results.

Q. Who are some of those people? A. Some of the people mentioned there I have paid money to.

Q. Is this one of them? "Can't remember;" "Can't remember?" A. I don't remember that item.

Q. "Can't remember; can't remember?" A. There are some there I do remember. I don't remember how I spent that money.

Q. What results did you pay money to produce? A. What results did I get?

Q. I want to know what results you attempted to get, by the payment of money; you said you paid money to get certain results. A. I would pay it as a commission for exploiting certain of my products.

Q. You were paying somebody commission? A. Yes, sir.

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Q. You have paid a great many people commissions? A. No, sir.

Q. Name some of them. A. They are on the list.

Q. Name them. A. There is a party by the name of Harding.

Q. Who is he? A. Connected with the railway supply business at one time, and make a turn by introducing me to people, and he said, "I think I can swing this order for you," and you have to pay somebody for doing something. He is in the Hudson Mechanical Rubber Company. That is where he is employed. He is president of that company, I believe.

Q. How much did you ever pay him? A. I paid him several hundred dollars.

Q. How many times have you paid money to him? A. Three or four or five times.

Q. Where do they appear on the books? A. They don't. They appear in my memory.

Q. Why don't you keep them on the books? A. We keep them on the books.

Q. How do you enter them on the books? A. Commission account.

Q. Under what title? A. Money paid to me.

Q. In other words, you draw money from the treasury of the company? A. Yes, sir.

Q. And pay it out and it is charged to you on the books? A. Yes, sir.

Q. And you turn in no voucher for it? A. No, sir.

Q. And then you dispose of it as you see fit? A. It is a good thing to forget about some time.

Q. You are a good forgetter, aren't you? A. Not always. When I carry a thing like that in my mind two years, that is a good memory.

Q. An item of $250 paid to P. Erskine Wood? A. That is a mistake, and should not have been in that account.

Chairman Thompson.—That is one of the items you should not forget?

Mr. Banks.—No, sir; the check is drawn to him and paid, and that is part of the purchase price I paid Mr. P. Erskine Wood for the business when I bought the stock.

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Q. You paid it out of the company's funds? A. Yes, sir, but it is charged to me on the ledger account.

Q. Have you a personal ledger account? A. There is a personal account there, yes, sir.

Q. Under what heading is that? A. W. C. Banks.

Q. What is this item, October 10, 1914, cash, not endorsed, $175; personal matter? A. I don't remember. I know I got some money at that time, but whether personal business myself, and my own account was rather heavy, so I opened another account.

Chairman Thompson.—What do you mean by rather heavy?

Mr. Banks.—It looked like I was getting all the money myself, and I wasn't charging any traveling expenses or any entertainment account. My account was rather heavy.

Chairman Thompson.— What difference does it make?

Mr. Banks.— Made no difference, but to have two or three accounts it would look better I thought.

Chairman Thompson.— Look better to who?

Mr. Banks.— Myself and the bookkeepers, and auditors and so forth.

Chairman Thompson.— But you owned the company?

Mr. Banks.— In a way.

Chairman Thompson.— In what way?

Mr. Banks.— My brother-in-law owns and controls the stock but I operate it. I have to pay him back some day.

Chairman Thompson.— What business is it of his how much money you draw?

Mr. Banks.— It is no business of his, but I like to have a decent set of books.

Chairman Thompson.— You think these items drawn under commission account would not look decent if charged to you?

Mr. Banks.— I don't think they would. I thought that would be a good way to handle that account, any traveling expenses or

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entertainment, under a commission account. I want to tell you right now that not one penny of that went to R. C. Wood. That P. Erskine Wood, $250, is part of the purchase price.

Chairman Thompson.— There are other checks besides this money has been drawn by you and given to P. Erskine Wood, isn't there, aside from the checks that were drawn to pay for the business? A. Yes, sir, for $640.

Chairman Thompson.— You estimated it to me this morning and Mr. Morse last night.

Mr. Banks.— Yes, sir, $640 due the Old Northwestern Construction Company.

Chairman Thompson.— You paid a good deal of money to P. Erskine Wood?

Mr. Banks.— Yes, sir. I probably paid 3,500 or 3,600 dollars all told.

Chairman Thompson.— And more than that.

Mr. Banks.— No, sir. Not a cent more.

Q. Within what time? A. The last check was paid in March, of $400 and the first check was paid of $350 June 2nd, 1914.

Q. What items of cash have you paid P. Erskine Wood? A. Not a cent, not a sou markee.

Q. There is an item November 12th, cash not endorsed, $200, "can't remember;" Mr. W. C. Banks thinks he may have got the money himself; what do you know about that? A. I think I did.

Q. What did you do with it? A. Spent it.

Q. For what? A. You can spend a lot of money in New York. I don't know; I spent it some way.

Q. You don't remember giving that to anybody? A. No, sir.

Q. Sure you didn't? A. Honest, not to Wood anyway, if I did. I don't remember giving it to anybody.

Chairman Thompson.— What does Wood do with his money?

Mr. Banks.— My God, I don't know. You tell me and I will tell you.

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Q. Has he much? A. Well, we people up in the Bronx where I live call him a millionaire. Whether he is or not I don't know.

Q. Does he own a good deal of property up there? A. No, sir. He had a piece of property. The only property I did know he had was the Albany hotel, or some name like that, up on Albany avenue, where he voted from, and he had a room there, and I believe he sold that to his brother.

Chairman Thompson.— Was that the old road house?

Mr. Banks.— It was a road house, and made a commissary out of it afterwards, and couldn't get a license for it.

Q. What other property did he own up there? A. That is all I know of, and that stood in the name of the Northwestern Construction Company, and I think he sold it to his brother, P. Erskine Wood.

Q. The Northwestern Construction Company sold it? A. Yes, sir.

Q. And they subsequently sold the company to P. Erskine Wood? A. Yes, sir.

Q. Two sales? A. That was done some six months before the other I think. It was the time we sold the plant in the Bronx to the Columbia Machine Works.

Q. What plant? A. We had a plant in Bedford Park, formerly my old factory, and it got too much of a burden on Mr. Wood to carry the plant, and we made a deal with the Columbia Machine Works of Brooklyn to sell the plant to him.

Q. What other property did he have? A. I don't know of any other.

Q. What other reason have you for calling him the millionaire up in the Bronx? A. I don't know any other reason.

Q. Where do you keep your bank account? A. My personal?

Q. Both. A. My personal account is at the Equitable Trust, about fourteen or fifteen dollars in it, and the other account is at the Fifth National Bank, for the corporation.

Q. That is in the name of the Northwest Equipment Company? A. No, sir, the N. W. Equipment Company.

Chairman Thompson.— Where was the Northwestern Construction Company's account?

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Mr. Banks.— German American Bank, and the Central Trust; Central Trust first, and the German American afterwards. When that deal was closed June 2nd my brother-in-law had to endorse the check to P. Erskine Wood for $1,028, which was the balance in the bank at that time.

Chairman Thompson.—Where do you think Wood keeps his money?

Mr. Banks.— He has a good many bank accounts; I couldn't tell you. I don't know which one he has it in.

Q. How many? A. He has had to my knowledge five or six of them at a time.

Chairman Thompson.—What banks?

Mr. Banks.— I couldn't tell you. I have seen checks of the Central Trust Company, and he has given me checks personally on the Central Trust Company and the German American and Corn Exchange and I think I got a check from him from the Bronx Borough once, but I am not sure. I got four checks from four different banks at different times.

Q. Any more? A. I never knew of any more.

Q. How recently? A. Before he became a commissioner.

Q. Tell us some better reason for calling him a millionaire up in the Bronx? A. Well, probably on account of his base ball ability, and the way he would buy base balls and base ball players and pay them and play on the team, and he was a pretty good thing in that respect. He would pay five or six other players to play with him.

Q. Where does P. Erskine Wood live? A. 118 East 36th street. I think he lives there with his mother; I am not sure.

Q. Is there any other reason for calling him a millionaire? A. No, sir. I have no other reason only hearsay, as a native of the Bronx.

Q. Did you ever hear anybody say that Wood was a millionaire? A. Where I first heard that, in going back about 1905 or 1906, 1905 and 1906, he played on the team I was manager of, The Schnorrer Club of the Bronx.

Q. Good snorers, were they? A. Schnorrer means a sucker, I think.

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Chairman Thompson.— Is that a yiddish name?

Mr. Banks.— I guess it is yiddish; I don't know. He played on that team, and the boys called him the millionaire ball player, and why he got the title, I don't know. We made a first-baseman out of him. He was first-baseman and we made a second-baseman out of him.

Q. Promoted him, did you? A. Yes, sir.

Q. Who are you trying to protect here this afternoon? A. Nobody only myself.

Q. What did you mean by your statement to me this afternoon you did not want to involve anyone in your answers? A. There are certain names and people I have been in close contact with.

Q. That are not down here? A. They are down there.

Q. You seem to be entirely able to explain everything about every name that is here, and that does not involve anybody, does it? A. No, sir.

Q. What did you mean by your statement you did not want to involve anybody? A. I don't think I made that statement, did I?

Q. Isn't that what you said to me? A. No, sir.

Q. What did you say? A. There are certain things I don't like to have people know about my business, and let my competitors get a peek into my own business affairs. That is what I did say.

Q. Didn't you say — A. I am not trying to cover anybody up.

Chairman Thompson.—Who are your competitors?

Mr. Banks.—Why, we have a whole lot of them, a bunch of them, that are competitors to me, big fellows and small fellows; all the electrical companies and railway supply companies that manufacture that kind of material. There is a lot of that business is competitive business. Some stuff I design myself, of course that is outside of that.

Q. Who is Mr. Fuhrer? A. He is connected with the Interborough. He loaned me five hundred dollars which I returned to him.

Q. When did he loan it to you? A. A short time after I incorporated the company, around August.

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Q. What year? A. 1914.

Q. What did you use that money for? A. General business, and paying bills, and I started on practically nothing.

Q. Mr. Fuhrer loaned you the money? A. Yes, sir.

By Chairman Thompson:

Q. How much did you pay out in commissions the last year? A. I don't know; probably three or four thousand dollars.

Q. Commissions? A. Yes, what is in those accounts there.

Q. I mean money you spent broadcast entertaining people in this way to get business. A. Three or four thousand dollars.

Q. Did you do a volume of business commensurate with spending money that way? A. The more money I spend the more business I get.

Q. And it paid you? A. Yes, sir.

Q. You must have had a good deal of business? A. I ought to have had more business for what I spent.

Q. You had a good business? A. Not very good the last year, the gross business was only thirty-one or thirty-two thousand dollars.

Q. Where is your factory? A. We have no factory. We have our stuff manufactured by the Columbia Machine Works and others. They make the majority of our production.

Q. Do you keep a record of your shipments? A. Yes, sir, we have a shipping tag or record, a bill for the material we get, or purchase, we have a bill that we charge against that, and our filing system, and every thing is filed to the original order.

Q. For instance, if the Third Avenue Railroad Company orders something from you, how do you deliver it? A. We order the material from the Columbia Machine Works, and if it is any volume, we have them ship it direct. We carry our own account.

Q. The transportation bills would go from them? A. Yes, sir, and they send a memorandum shipping bill, showing what they ship.

Q. Is there anything you sell would be delivered otherwise than by a transportation company giving a bill of lading? A. No, sir.

Q. Everything you sell would have to be transported? A. Yes, sir; every order we ship, we have all the orders attached, and you can pick out any orders.

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Q. How much did you pay for this business? A. Three thousand dollars. I think it was overpaid, too.

Q. Do you still remain friendly with Wood? A. To a certain extent, yes.

Q. And with Johnson? A. Sidney Johnson?

Q. Yes. A. I haven't seen the gentleman in several months. The last time I saw him was in front of 30 Church street, and shook hands with him, and wanted to know how he was, and something like that.

Q. How long ago is that? A. Six weeks or so.

Q. How many times have you seen him since last spring? A. About three or four times.

Q. Did you see him during the winter? A. Might have.

Q. Well, did you? A. I won't swear whether I did or not. I guess I did, probably. I would meet him in the hall, in 30 Church.

Q. Did you meet him in the office? A. No, sir.

Q. Did you ever meet him up in the Bronx? A. No, sir.

Q. Why do you emphasize that? A. I never seen him in the Bronx. I don't know whether he has ever been in the Bronx. I never seen him in the Bronx.

Q. Have you ever been up in the Bronx in business? A. No, sir; not since 1912, about.

Q. Do you know anybody else connected with the General Railway Signal Company? A. I know the president, Mr. Salmon.

Q. What is his first name? A. His first name I don't know.

Q. When did you see him last? A. Not in three or four years.

Q. Did you see him this last year? A. No, sir.

Q. What? A. No, sir; I didn't.

Q. Did you have any communication with him? A. No, sir.

Q. Did you see any agent of his? A. Well, now, you ask me about an agent of his. There is a place, No. 1 Dey street, where I do go in once in a while and buy a cigar, or buy some one else a drink, and several agents of his come in there, and one of them is Mr. Briney, and another one is Mr. Coleman, and there might be a Mr. Graves, too, and they go in there occasionally in the evening, and I meet them, but I haven't seen Mr. Salmon.

Q. Have you ever had any transactions with those gentlemen? A. No, sir, never.

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By Mr. Lewis:

Q. Where do you live? A. 216 East Tremont avenue, Bronx.

Q. Did you sell any goods to the Interborough in the early part of last year? A. Yes, sir.

Q. What? A. I couldn't tell you the amount.

Q. You were selling to them regularly right along all through last year, were you? A. Yes, sir.

Q. Who was the purchasing agent for the Interborough? A. D. W. Ross.

Q. Mr. Fuhrer employed in his office? A. Yes, sir.

Q. You borrowed five hundred dollars from Mr. Fuhrer? A. Yes, sir, right after I started in business.

Q. Who was employed in Mr. Ross's office? A. Yes, sir.

Q. And you paid Mr. Fuhrer five hundred dollars December 23rd? A. Yes, sir.

Q. After having sold considerable quantities of goods to Mr. Ross for the use of the Interborough? A. Yes, sir.

Q. That is the way you want to leave that transaction, is it? A. Yes, sir, absolutely.

Q. And gave him a check for it? A. Yes, sir. If it was otherwise, I wouldn't have given him a check.

Q. This statement here, "Repayment of loan to W. C. Banks," I suppose is the loan made by Mr. Fuhrer to W. C. Banks? A. Yes, sir.

Q. Mr. Fuhrer is employed in the office of D. W. Ross, first Vice-President of the Interborough? A. Yes, sir.

Q. That is a statement you made in explanation of this item to the accountant employed by this committee, which appears upon the books of your company, under the heading "Commission account?" A. Yes, sir.

Q. Without any explanation as to the nature of that payment? A. Yes, sir.

Q. And that is what you expect this committee to believe is the explanation of that item, is it? A. I would like to have them believe that.

Q. You would like to have them believe that? A. Yes, sir.

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Q. Who was P. J. Delaney? A. He is connected with the New York Railways and has charge of the stores. He purchased some material for me at Gimbel's and Sax's and I owe him a bill to-day for forty-eight dollars he has been hounding me for. He made some purchases for me, rugs, and so forth. He is very close to the departments of those stores and could get better prices than I could.

Q. On January 15, 1915, you paid him $125? A. No, sir.

Q. You paid him $206.25? A. Yes, sir.

Q. You entered that under commission account? A. Yes, sir.

Q. Without any explanation, is that so? A. Yes, sir.

Q. And the explanation which appears on this sheet is an explanation you have given to the accountant for the Committee? A. Yes, sir.

Q. What was you idea in entering an item of repayment of loan of five hundred dollars in the commission account? A. I don't know what my idea was. The same as P. Erskine Wood. I think it was more a mistake of the accountant and the auditor. He was bothering me and when he was writing up the books I said, "Shove it in there." I don't know why. It should have been under a loan account.

Q. You have not any explanation to offer? A. No, sir.

Q. What account should that have gone to in your books, that loan item? A. It should have went into my account, W. C. Banks account.

Q. Did you carry any loan account on your books anywhere? A. I don't think I have, no, sir.

Q. But you are making loans from time to time, aren't you? A. One of those items, I made one loan of two hundred dollars to a friend of mine once, and never got it back, and I suppose I charged it up to commission account.

Q. You charge up to commission account when you make a loan? A. Yes, sir, and wipe it off, like the W. J. Lee account, six hundred dollars, I charged that up to commission account, probably.

Q. Who is he? A. A former employee of mine.

Q. You loaned him six hundred dollars? A. No, sir; I paid him six hundred dollars upon business he was supposed to have gotten for me.

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Q. From what source? A. General supplies.

Q. Do you borrow any money from anybody, as a rule? Do you frequently borrow money? A. I borrow money from the bank I do business with.

Q. Don't you keep a book account of the loans you make at the bank? A. Yes, sir.

Q. Under what head? A. They are in the bank book, I think, and in the cash book.

Q. On your books, do you keep a ledger account of any sort? A. I suppose there must be a loan account there, an investment account, and royalty account.

Q. Don't you know? A. I don't know off hand. I don't keep the books.

Q. You are the manager of this business, aren't you? A. Yes, sir.

Q. And it is up to you to know what books you keep? A. Yes, sir.

Q. And you can't tell whether you keep a loan account on your books or not? A. I couldn't tell you, no, sir.

Q. Who is D. McGuire? A. He is in the supply business.

Q. What company is he connected with? A. McGuire Rubber Company. He is president of that company, another millionaire.

Senator Lawson.— Do you loan money to millionaires?

Mr. Banks.— That wasn't a loan account.

Q. On March 27th, you seem to have paid one hundred dollars to J. D. McGuire, and entered it in the commission account? A. It wasn't one hundred I don't believe.

Q. What was it; that is what it says here? A. I don't know. I don't think it was one hundred.

Q. What do you think it was? A. Fifty or sixty, somewhere around there. I don't know what the records show.

Q. Was that item entered under your direction at one hundred? A. No, sir, read off the books by Mr. Wright to his assistant, and whether he has it down there correct or not, I don't know.

Q. Do you know what it was intended to pay, and what the obligation was? A. Some money I borrowed from him probably.

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I don't know. I might have borrowed the money from him, and he might have cashed a check for me. Apparently Mr. McGuire's signature is on that check, and he cashed the check for me probably.

Mr. Lewis.— I think we will have to ask you to come back and see us in the morning.

Mr. Banks.— I will, gladly.

By Chairman Thompson:

Q. When was the last time you saw Mr. Robert C. Wood? A. This morning, sir.

Q. Where did you see him? A. Grand Central depot, and walked down Park avenue as far as 36th street and walked up to his brother's house.

Q. And what was the subject of the conversation? A. Wanted to know if I had any cancelled checks, and what business we had done with the Signal company, and I do not know why he asked me.

Q. How did you happen to meet him in the Grand Central station? A. He called me up and asked me to see him on the 8:20 train, and I missed him, and we met at the Grand Central station.

Q. Did you go to see him, or did he ask to see you? A. He asked to see me, and I volunteered to see him last night, and I said, "I will see you now, if you want to see me." He said, "No." He was over in the Country club, and pretty tired.

Q. Anyone else with him? A. No, sir; he was alone.

Q. Last night you told Mr. Morse a great many of those entries on your account covered money paid to P. Erskine Wood? A. They are in his name.

Q. Didn't you tell Mr. Morse—you answer that question? A. Pardon me —

Q. (Question repeated by the stenographer). A. Checks were drawn in the name of P. Erskine Wood.

Q. You told him those items on your books covered money you paid to P. Erskine Wood, didn't you? A. Not those items.

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Q. I didn't ask you about any particular items, but you told Mr. Morse last night there were several items in your books covered moneys you paid P. Erskine Wood for commissions? A. No, sir; I didn't say that; absolutely no. I never paid P. Erskine Wood any commissions.

Q. You got quite communicative to Mr. Morse and talked with him quite freely last night, didn't you? A. Yes, sir; I did.

Q. And this morning you refused to give explanations as to these things after you had seen Commissioner Wood? A. No, sir, I didn't refuse to talk to Mr. Morse at all this morning.

Q. You refused your books this morning? A. I refused to bring them here.

Q. You refused to explain the items this morning? A. No, sir; only where I can't remember.

Q. You refused to explain them at all? A. Certain items I could not explain, and I couldn't tell him.

Q. You didn't make any refusal last night? A. Yes, sir, I did, some that he asked me that I couldn't tell him.

Q. Was the fact you saw Mr. Wood the reason why you changed your demeanor to Mr. Morse over night? A. No, sir, not a bit of it.

Q. You say Mr. Wood asked you about some checks? A. Yes, sir.

Q. What checks did he mean? A. Checks paid to P. Erskine Wood.

Q. He wanted to know about that? A. If I had them and if I had the notes I gave to P. Erskine Wood, and I told him I didn't have those.

Q. What did you tell him about the checks? A. I had those.

Q. Where are they? A. At my office. Mr. Wright has seen them, and Mr. Morse; they are over there.

Q. What else did he ask you about? A. Also about any signal business we had done.

Q. Didn't he tell you to not give this committee any more information than you could help? A. No, sir.

Q. If you have nothing to conceal, why have you acted as you have all day today? A. My books I require in my business, and if I bring them over here, they will be like the stock certificates. I have to have them.

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Q. What have you got to have them for? You can't tell anything about them. A. I can't tell, but my help can.

Q. Who is there can explain these items? A. I don't think anybody can explain those items.

Q. What is the use of having books? A. I have to have books to take care of my business.

Q. When did you see P. Erskine Wood last? A. At the hearing about a week ago.

Q. When did you last see him before that? A. But once, when he came to the office to collect a check on a payment.

Q. When did you see R. C. Wood before this morning? A. Sunday morning at about ten o'clock.

Q. Where was that? A. At — I don't remember the fellow's name, a baseball diamond, or gymnasium, and he was practicing out in the cold, up in Westchester.

Q. Did you talk with him at that time? A. About three minutes.

Q. When did you see him before that? A. About every Sunday when the weather is good, and if he is out playing ball with the boys I see him.

Q. You say you have not seen P. Erskine Wood since you made the transfer, except the time he was on the stand? A. Possibly twice before on the stand. I went to his office a short time after I took hold the concern, and I think he came to my office after that to bring some papers up. That was two or three weeks after the deal was closed.

Q. You haven't seen him since the deal was closed? A. No, sir, only that.

Q. How do you explain the fact you never see him, but you did see R. C. Wood once a week? A. I have known him a great many years, and we fool around on the baseball diamond. That is a fad he has, and I have been going there for years, long before this thing happened.

Q. As a matter of fact your business was done with R. C. Wood, and you used the name of P. Erskine Wood, wasn't that a fact? A. No, sir.

Q. Then why didn't you see P. Erskine Wood oftener? A. What did I want to see him oftener for?

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Q. I don't know; I don't think you did. A. I carried my obligations out with P. Erskine Wood, and that was all that was necessary.

Q. You carried out your arrangement with R. C. Wood, didn't you? A. No, sir.

Q. Talked to him about it? A. No, sir, I did not.

Q. Talked with him about the business? A. No, sir. He didn't ask much about my business, and didn't tell me anything about that signal contract on the Kansas City Railroad. I know that.

Q. Did you talk with him this morning, when you saw him, about the signal matters? A. Off hand. I said, "I didn't know you were clever enough to pull that off."

Mr. Shuster.— What did he say? A. He pooh-poohed, and said "forget about it."

Q. What did he get the $1500 for? A. I don't know; I suppose for the introduction to the proper signal company.

Q. He was pretty friendly with Johnson, anyway, wasn't he? A. He must have been at that time. I don't know whether he is now or not.

Q. And he met him pretty often, didn't he? A. I don't know.

Q. Johnson was in and out of your office quite often? A. He came in quite often at the time.

Q. And you met him in the Public Service Commission office quite often after that, didn't you? A. I never got that information, only out of the paper.

Q. What was the first thing Wood said to you this morning? A. The first thing he asked about the cancelled checks and wanted to know if I had them, and wanted the notes. I said I didn't have them, they were destroyed; they had another man's name on the note.

Q. What else? A. And talked about the business, what we did with the signal company, and asked if I had done any business with the signal company, which I haven't, and haven't a single one of them on the books.

Senator Lawson.— He has captured them all, that is the reason you haven't got them.

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Mr. Banks.— I don't know.

Chairman Thompson.— Did he say anything about the Interborough business this morning?

Mr. Banks.— No, sir. I have the Interborough business and not Robert C. Wood.

Chairman Thompson.— How did you get it?

Mr. Banks.— By getting the acquaintanceship of the engineers and others, and giving them something they haven't had before on the road, better material, safety first.

Chairman Thompson.— We will suspend now until 11 o'clock to-morrow morning, and you are directed to appear at that time.

(Whereupon at 6:25 o'clock P. M. an adjournment was taken to 11 o'clock A. M., December 9, 1915, at the same place.)

DECEMBER 9, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City.

The Committee was called to order, pursuant to adjournment, at 11 o'clock A. M., Chairman Thompson presiding.

Quorum present.

Chairman Thompson.— I do not like to take this course which I feel I ought to, because I do not want to appear inhospitable at all, to anybody or anybody represented here, and if it was not for the following reasons that in my judgment are proper I would not do it, but for to-day and to-morrow we shall have to ask that no copies of our record be kept by anyone except by our official stenographers, and for that reason we will either have to go into executive session or excuse the other two stenographers who are here. I am sorry. We like you, and would like to have you stay, and just as quick as I can let you come back I will notify you, and I will also have two extra copies of our official record kept and delivered to you to cover the interim.

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Mr. Ryan.— Does that mean you want us to leave the room?

Chairman Thompson. —I do not care to have you take any more record, and I will have you come back just as quick as I feel that I can.

Mr. Lewis.—You said yesterday, Mr. Banks, that you would have no objection to waiving immunity.

Mr. Banks.— No, sir, none whatever.

Whereupon Mr. Banks signed a waiver of immunity, which is marked Exhibit A of date December 9, 1915, and is as follows:

"December 9, 1915.

"Having been subpoenaed as a witness, and being about to testify as such, before the joint committee of the Senate and Assembly, appointed to investigate the administration of the Public Service Commissions Law, I do hereby waive immunity from and any and all right to immunity and voluntarily testify as such witness, and consent that any testimony that I may give may be used in any proceeding hereafter instituted against me either civil or criminal.

Signed, W. C. Banks."

Witness December 9, 1915, Clarence E. Shuster."

WILLIAM C. BANKS, being recalled for further examination testified as follows:

By Mr. Lewis:

Q. You said that you acquired title to the Northwestern Construction Company in June, 1914, did you not? A. Well my brother-in-law and myself, yes, June 2nd, 1914.

Q. Was there any cash on hand at that time belonging to the company? A. On that date I think a check was drawn for a thousand and eighty odd dollars to P. Erskine Wood, which was the balance in the German American Bank.

Q. Who signed that check? A. H. R. West.

Q. He was the treasurer of the company? A. He was president of the company and is president of the company now.

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Q. Where does Mr. West live? A. He lives in Washington Heights. He has moved several times and I do not know the street number.

Q. New York city? A. New York city, yes, sir; 165th street, you can find out.

Q. That was all the money that was on hand? A. Yes, sir. Belonging to the Northwestern Construction Company, and it was turned over.

Q. What was the occasion of that being turned over? A. When I negotiated the purchase I did not purchase the cash balance.

Q. You bought the stock? A. Yes, sir.

Q. Didn't the stock carry with it the title to all money on deposit? A. No, sir, only good will and patent right but not the money or cash or accounts receivable.

Q. Do you mean to tell me the transfer of the capital stock of that company did not carry with it all the properties that that stock represented? A. No, sir. I didn't get it anyway.

Q. You were entitled to it, weren't you? A. I don't think so.

Q. You negotiated to buy the stock? A. Yes, sir.

Q. Doesn't the stock carry title to all the assets of the corporation? A. I don't know whether it did or not.

Q. Did you have any legal advice at the time you took this company over? A. Louis Cass Ledyard, Jr., was the attorney of record for Mr. P. Erskine Wood at that time and also my attorney.

Chairman Thompson.— I do not want Louis Cass Ledyard's name brought in this, or any mud cast on it, for I do not think there is entitled to be. Mr. Louis Cass Ledyard's name signed to the documents was written in honest everyday ink, and was a part of the regular ink transaction. He was not a part of the safety ink transaction. I want that on the record, right now.

Q. Was Mr. Ledyard present at the time this check was drawn to Mr. P. Erskine Wood? A. I believe he was.

Q. Did he advise anything of that sort? A. I don't know. I believe he was present at the time however.

Q. Did Mr. P. Erskine Wood remove any other assets of the corporation? A. No, sir.

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Q. In what bank was that cash deposited? A. German American Bank, and the check is at our office, the canceled check, and the bank book is at our office, and you can see it.

Q. You took the capital stock of the company for which you paid your money and allowed the withdrawal from the treasury of the company of all cash on hand? A. Yes, sir, that is correct.

Q. Did you take in any money during the month of June? A. Do you mean —

Q. The company? A. The Northwestern Construction?

Q. Yes. A. Yes, sir.

Chairman Thompson.— Did you get the accounts receivable when you took over the stock?

Mr. Banks.— I signed an agreement that I was to turn all the outstanding accounts as they came in over to P. Erskine Wood.

Chairman Thompson.— Where is that agreement?

Mr. Banks.— It is in the records of the minutes there, isn't it?

Chairman Thompson.— I haven't seen it.

Mr. Banks.— $540 odd, I think.

Chairman Thompson.— Where is the agreement?

Mr. Banks.— In the office, I think.

Q. What was the consideration of that agreement? A. Wait a minute, I have some papers here, and I may have it here. Wait a minute; yes, there it is. I took this out, and there it is.

Chairman Thompson.— What is that attached to it?

Mr. Banks.— A blank. I didn't know I had it in my pocket. I have kept it in my pocket ever since. I am a great fellow for keeping papers, some papers. I believe you will find by that agreement Mr. Wood obligated himself to pay any debts against the company, outstanding debts.

Q. That transaction was not a simple purchase of the stock and taking over of the company with all its assets and liabilities? A. No, sir.

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Q. It amounted to an agreement by which Mr. Wood retained the cash and the accounts receivable and assumed the accounts payable; is that the idea? A. Mr. P. Erskine Wood, yes, sir.

Chairman Thompson.— Where is the original?

Mr. Banks.— I don't know. That is all I have.

Chairman Thompson.— Who was the agreement delivered to?

Mr. Banks.— Mr. Wood may have the original, Mr. P. Erskine Wood.

Chairman Thompson.— Have you got it?

Mr. P. Erskine Wood.— Mr. Ledyard has it, or myself.

Chairman Thompson.— Will you go and get it?

Mr. Banks.— I don't think I have the original.

Q. How long did Mr. P. Erskine Wood hold the title to this stock? A. According to the date of those certificates, about May 25th, I think.

Q. About a week? A. He might have had them before that, but the date of the certificate is May 25th.

Q. You began to take in money right along, did you? A. Not the first month so much. What do you mean?

Q. The cash began to come in for the business? A. Yes, sir. The first month was poor.

Q. How about July? A. A little better, I think.

Q. Do you remember any payment you received in the month of July? A. No, sir. I turned this money over and drew a company check against it to P. Erskine Wood, and I deposited in our bank and gave a check for it.

Q. Do you remember the receipt of any considerable amount of money during the month of July by your company? A. No, sir.

Q. I find one item set out here on the sheet of the expert accountant of $846.38, received in the month of July; is that the aggregate of the receipts for the month? A. I presume so, yes, sir.

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Q. Do you know from whom any of that money was received? A. The books will show it and the ledger account will show it, and the check book.

Q. The check book will show where the money comes from? A. I think so, it should, it was on the stubs.

Q. You think the entry was on the stubs showing the receipt of the money deposited to the company? A. Yes, sir, I am absolutely sure of that.

Q. In August your receipts were $2,891; was that a better month? A. It must have been.

Q. Do you recall having any considerable payments during the month of August — do you recall any names of any persons who paid you money during the month of August? A. No, sir.

Q. September the cash receipts were $2,745.67; do you recall anything about those items? A. No, sir.

Q. Or the names of any people who paid you money during that month? A. Probably customers of ours. I don't know who they were and the amount. Might have been the Interborough or the Third Avenue or the New York Railways or the Long Island Railroad.

Q. Any of these items represent loans that you had made or may have been made to you? A. Loans made to me?

Q. Had you borrowed any money during that month? A. Yes, sir.

Q. Any of the items represent money that was loaned to you? A. I think so.

Q. Do you remember from whom you borrowed any money? A. $500 from Mr. Fuhrer about that time.

Chairman Thompson.— Who is Mr. Fuhrer?

Mr. Banks.— Connected with Mr. Ross, in this building.

Chairman Thompson.— Another millionaire?

Mr. Banks.— I don't know. He was very kind to me, giving me help at the time I was buying the business.

Chairman Thompson.— What kind of help do you mean?

Mr. Banks.— He loaned me $500.

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Chairman Thompson.— Where did he get it?

Mr. Banks.— I don't know.

Chairman Thompson.— Did you ever have any other evidence this Mr. Fuhrer ever had $500 all at one time at any time before?

Mr. Banks.— Did I?

Chairman Thompson.— Yes.

Mr. Banks.— I couldn't tell you that. I couldn't tell you what he has or hasn't.

Chairman Thompson.— He is not a fellow who has any means except his salary?

Mr. Banks.— I went to him and told him I needed about $500, and he said he could lend me that and gave a check for it.

Chairman Thompson.— On what bank?

Mr. Banks.— I couldn't tell you that.

Chairman Thompson.— Do your books show?

Mr. Banks.— I don't think so. If Mr. Fuhrer kept that check he will probably see my name on it.

Chairman Thompson.— Where is he now?

Mr. Banks.— In this building.

Chairman Thompson.— Send a subpoena for him.

Q. What is Mr. Fuhrer's first name? A. I don't know.
Q. Where is he located? A. Room 1204, Mr. Ross's office, 1204 in this building.
Q. In September your receipts amounted to $2,745.62?

Chairman Thompson.— Your books show M. Fuhrer.

Mr. Banks.— Yes, sir. Some call him Mike and I don't know whether his name is that or not.

Chairman Thompson.— I wonder what he calls you now?

Mr. Banks.— I don't know. I should worry.

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Q. Did you borrow any money in October, do you remember? A. I might have, I don't know.

Q. Any recollection of it? A. I have no recollection of it.

Q. Did your income in October increase rapidly? A. I don't know what the income was that month.

Q. Have you any recollection of any circumstances which would lead to an increase of income in that month? A. No, sir, I haven't any.

Q. Your record shows you received $3,792.86 in October? A. Yes.

Q. Have you any way for accounting for that increase? A. I think October, November and December I started to get some business from New Jersey, The Lister A. C. Company, a girder steel business. I sold a good many tons of steel work.

Q. How many tons? A. I don't know. Fifty to a hundred tons probably.

Q. What price per ton? A. I bought it second-hand at about sixteen to seventeen dollars a ton and got as high as twenty-three to twenty-four dollars for it.

Q. Was that paid for during the month of October? A. Along those months, I think.

Q. To whom did you sell it? A. Different people, Lister A. C. Works, and sold some to the Rapid Transit Subway Construction Company.

Q. Who is interested in that company? A. That is the Interborough crowd.

Chairman Thompson.— Who did you buy it of?

Mr. Banks.— From the Albert Volk Company, and bought some from the Standard Oil Company.

Q. These transactions all appear on your books, do they? A. Yes, sir.

Q. Do you remember borrowing any money in the month of November?

Chairman Thompson.— Who else did you buy it of — where is Albert Volt & Company's office?

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Mr. Banks.— They are the fellows broke up the Hoffman House.

Chairman Thompson.— And you got some from the Standard Oil Company?

Mr. Banks.— I bought some of Stadler.

Chairman Thompson.— What is his full name?

Mr. Banks.— I don't know; the address is 57th street; they are regular contractors.

Chairman Thompson.— Did you buy of anybody else except those two?

Mr. Banks.— I don't remember.

Chairman Thompson.— How did you pay for it?

Mr. Banks.— Cash and checks, and a lot had to pay cash, long green.

Chairman Thompson.— Keep any record of it?

Mr. Banks.— Only purchasing of scrap iron, and such things.

Chairman Thompson.— You didn't keep any record under their names in your books of it?

Mr. Banks.— I don't know. I might have done it.

Chairman Thompson.— What account was it charged in on your books, that purchase?

Mr. Banks.— Why, merchandise purchased, I presume.

Chairman Thompson.— Are you sure?

Mr. Banks.— I wouldn't swear to it.

Chairman Thompson.— Wasn't it charged in this commission account?

Mr. Banks.— It might have been.

Chairman Thompson.— Why should it go in there?

Mr. Banks.— I don't know. I don't know that it was put there.

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Chairman Thompson.— Can you give any reason on earth for putting it there, if it was there?

Mr. Banks.— No, sir, I couldn't give any reason.

Chairman Thompson.— If it was not commission you could not give any reason why it should appear in that account, could you?

Mr. Banks.— No, sir.

Q. Did you make any loans in the month of November, borrow any money? A. I couldn't tell you.

Q. Your receipts in the month of December, do you remember what they were? A. No, sir.

Q. Did you make any loans in the month of December? A. I don't remember.

Q. Borrow any moneys from banks anywhere? A. No, sir.

Q. Your borrowings were usually confined to private individuals, were they? A. Absolutely, yes, sir.

Q. And confined to men in the employ of various corporations with which you were dealing? A. No, sir, I wouldn't say that.

Q. Have you any recollection of the receipts aggregating $4,310.74 received in the month of November? A. No, sir.

Q. Have you any recollection of the items entering into and making up the total of $4,516.38, received in the month of December? A. No, sir, I have not.

Q. Business increased rather handsomely from July to December, hadn't it? A. It was better, yes.

Q. $846.38 in July, and $4,516.38 in December, a handsome increase, wasn't it? A. Rather.

Q. And you haven't any recollection as to how to account for that increase? A. Well, I think if your accountant has gone over the books and seen what I was doing and what business, that would have answered it.

Chairman Thompson.— Why haven't you more confidence in these books than you have?

Mr. Banks.— I don't remember.

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Q. Do you remember borrowing any money in the month of January, 1915? A. Might have borrowed some or loaned some.

Q. Was your business better in January than usual? A. I can't remember, and I can't refresh my memory on that.

Q. If there was a very considerable increase between December and January, might it not have rested in your memory and made an impression of some sort? A. I think it might have, but I don't remember offhand.

Q. Would you say your increase from December to January was as much as a thousand dollars? A. I don't remember whether it was or not.

Q. Have you anything in your mind that would refresh your recollection or that which would furnish any refreshment to your recollection? A. No, sir.

Q. The month of January your receipts, according to your cash book, were $7,949.39, more than three thousand dollars increase from your December; does that fact recall to your mind any transaction which would account for that increase? A. No, sir.

Q. How has business been since January? A. 1915?

Q. Yes. A. Nothing very extra.

Q. Hasn't been as good, has it? A. It has been falling off.

Q. Is there any significance in the fact that the month of February the receipts fell to $3,694.69? A. I don't know why they fell, but we couldn't get the stuff manufactured and the material out.

Q. The fact that this Committee was appointed in the latter part of January, did that have anything to do with it at all? A. Absolutely no, I don't think so.

Chairman Thompson.— This was not two years ago.

Mr. Banks.— Last January?

Chairman Thompson.— Can you remember back to last January?

Mr. Banks.— No, sir; I don't remember. I would have to look over the books to refresh my memory. Every month's business has passed out of my mind; looking after new business all the time and forget about the old you have done.

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Q. Do you remember what your cash receipts were for the month of November this year? A. No, sir; I don't.

Q. Do you remember that they fell to $1,672.92 in the month of November, 1915? A. I know it was the bummest month we have had.

Q. Have you any way of accounting for it? A. We had business, but couldn't get the goods out.

Q. Where did you go after you left this room? A. No. 1 Dey street, and had a couple of high balls and from there up to a bowling alley and bowled all night.

Q. All night? A. Until one o'clock.

Q. Who did you see at Dey street? A. The proprietor there and two or three other people having a drink.

Q. Anybody else? A. That is all. I didn't want to go home last night for fear I might get another telephone call to see people this morning. I called my wife up and told her if anybody called to not answer the phone.

Q. Was that because you did not want to see people? A. The way you fellows have gone at me you might think I was in cahoots with people.

Q. When was the last time you saw Mr. Johnson? A. It was about six weeks or two months ago.

Q. Have you seen him since? A. No, sir.

Q. Did you see him last night? A. Emphatically no.

Q. What kind of a looking man is Mr. Johnson? A. Johnson is a man weighing about a hundred and sixty or a hundred and seventy pounds, I should say, about five foot eleven, smooth face.

Q. How old? A. I should judge about forty years of age, or thirty-nine, or probably forty-one, around forty years.

Q. How does he dress? A. Very neat.

Q. Can you give anything definite about his clothing, as to style, or cut, or material, or color? A. It is up to date.

Q. Always up to date, is it? A. I always seen him dressed very neatly.

Chairman Thompson.— What kind of a hat does he usually wear?

Mr. Banks.— I have seen him with soft hats and hard hats, and all kinds.

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Chairman Thompson.— Generally wears a brown hat, doesn't he?

Mr. Banks.— I have seen him with a brown hat on. I wear one myself.

Q. When you left No. 1 Dey street and went up town, how did you go? A. Subway to 149th street, and elevated to 161st street.

Q. Anyone with you? A. Why, yes, sir; a gentleman was with me, a man, his wife and one child.

Q. What was his name? A. Mr. Delaney.

Chairman Thompson.— Full name?

Mr. Banks.— Frank J. Delaney.

Chairman Thompson.— Where does he live?

Mr. Banks.— Brooklyn.

Q. Where did he go? A. I think to a theatre.

Q. What time was it? A. Quarter of eight, I think, or eight o'clock.

Q. Where did he leave you? A. 42nd street, at the Grand Central Depot.

Q. Where did you meet him? A. At No. 1 Dey street.

Q. You had not mentioned him until I asked you who went uptown with you? A. I met several gentlemen there besides him.

Q. What is that? A. I met several other gentlemen there besides him.

Q. Who were they? A. I didn't know their names, one I didn't and the other I did. The two I had a drink with, I didn't know their names.

Q. How long have you known Mr. Delaney? A. About six or seven years.

Q. Have any business relations with him? A. No, sir.

Q. Was he in at No. 1 Dey street when you went in there? A. Yes, sir.

Q. Did you sit down with him and have a conference? A. We had several drinks at the bar and went in and sat down and had another drink while he was waiting for his family to come over.

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Q. You had more than two drinks? A. Might have had three or four.

Senator Lawson.— Was this Mr. Delaney the man with the Interborough?

Mr. Banks.— Yes, sir; I have known him for years, and we bowl together and go out in motor boats, and he has charge of the stores for the Interborough.

Chairman Thompson.— Did you ever borrow any money from him.

Mr. Banks.— No, sir; I owe him a bill for a rug that he bought for me now.

Chairman Thompson.— You never borrowed any money from him?

Mr. Banks.— I might have, yes.

Chairman Thompson.—Do you recollect any time?

Mr. Banks.— Yes, sir; I do.

Chairman Thompson.— When?

Mr. Banks.— I don't remember when, I don't know when. I borrowed money from him. I have borrowed.

Chairman Thompson.— If there was an account on the books for commissions paid to him, could you recollect the loan immediately then?

Mr. Banks.— No, sir; I couldn't.

Senator Lawson.— Have you ever been down to Mr. Delaney's summer home?

Mr. Banks.— Yes, sir; a great many times. I have been out with him in his motor boat and on Coney Island trips, and sailed with him.

Senator Lawson.— He makes purchases for the Interborough, doesn't he?

Mr. Banks.— I don't know whether he does or not.

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Senator Lawson.— He is called their purchasing agent by friends generally, isn't he? And he is introduced as the purchasing agent of the Interborough?

Mr. Banks.— I have heard him introduced as purchasing agent, but Mr. Ross is purchasing agent.

Q. Does Mr. Delaney have gray hair? A. Slightly gray.

Q. Was it before eight o'clock when you came out from 1 Dey street? A. Yes, sir.

Q. Did he ask you anything about your appearance before this Committee and whether his name was brought in it? A. Not that I remember. I told him I was tied up all day yesterday, and I had a lunch engagement yesterday and was late getting there. I go to lunch occasionally with him.

Senator Lawson.— You talked about your appearance here and your testimony with him, didn't you?

Mr. Banks.— Yes, sir, some of it.

Senator Lawson.— Tell us a little about the conversation.

Mr. Banks.— Nothing except I was before you gentlemen and on the stand and questioned about these things.

Chairman Thompson.— Did you call us that?

Mr. Banks.— Questioned about certain of my accounts, and the main thing you fellows were trying to show Robert C. Wood was getting money out of my concern, and I thought it was a great joke.

Senator Lawson.— What did he think about it?

Mr. Banks.— He might take the same impression you do. A great many people have an idea Robert C. Wood is still with the N. W. Equipment Company.

Senator Lawson.— Did he ask you if you brought his name into it?

Mr. Banks.— Yes, sir. I did say, "By the way, I got you charged up to a Commission for two hundred dollars and some

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cents, and your name was on that check," and he said, "You never gave me a check for anything, did you?" and I said, "Yes, you bought me some stuff, and I paid for it," and he said, "I have a bill against you now."

Senator Lawson.— Did he make any objection personally to your bringing his name into it?

Mr. Banks.— No, sir.

Senator Lawson.— He did not refresh your memory in any way, did he?

Mr. Banks.— How could he refresh my memory?

Senator Lawson.— In regard to anything you might have had between his company and your company?

Mr. Banks.— No, sir.

Chairman Thompson.— You say a lot of people have an idea R. C. Wood is mixed up with your company?

Mr. Banks.— Yes, sir.

Chairman Thompson.— Does Delaney think so?

Mr. Banks.— I think so.

Chairman Thompson.— The whole Interborough crowd thinks so, don't they?

Mr. Banks.— Yes, sir.

Q. Do you find that an advantage in your business? A. I don't think I have received a dollar's worth of business through his being on the Public Service Commission.

Q. You think you would have gotten just as much if you had not bought Wood out, and started in business for yourself? A. I think so. He did not give me any help at all.

Chairman Thompson.— I am going to ask a favor of you during the recess, that you do not communicate with Mr. Fuhrer.

Mr. Banks.— Very well, I don't have to.

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Chairman Thompson.— We will now take a recess until 2 o'clock, P. M.

(Whereupon, at 1 o'clock P. M., a recess was taken to 2 o'clock P. M.

AFTER RECESS

P. ERSKINE WOOD, being recalled for further examination, testified as follows:

(A waiver of immunity was handed to the witness, which he signed, and which was marked Exhibit B, of date December 9, 1915, and which is as follows:)

"I, P. Erskine Wood, residing in the city of New York, presenting myself as a witness before the Joint Committee of the Senate and Assembly of the State of New York, duly appointed for the purpose of conducting an investigation of the administration of the Public Service Commissions Law, hereby specifically waive any and all immunity from indictment and prosecution, to which I may be entitled by reason of any provision of any law of the State of New York, on account of any testimony that I may now or hereafter give in relation to the subject matter of such investigation or otherwise, and consent that the testimony so given by me may be used independent of and free from any and all claims to immunity to which I might otherwise in any event be entitled.

Signed, P. ERSKINE WOOD.

Dated this 9th day of December, 1915.

Witness, G. W. MUNSON."

By Mr. Lewis:

Q. Will you read that over and sign it? A. Surely.

Q. You have been sworn heretofore, have you not? A. Yes, sir.

Q. Will you tell us what your business is at present? A. I am in the bond business.

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Q. Where is your office? A. 2 Wall street.

Q. What character of bonds do you deal in? A. Investment securities of all kinds.

Q. Municipal or utilities? A. Both.

Q. What is your firm name? A. Colgate, Parker & Company.

Q. How long have you been in that business? A. April, our firm started April 1, 1913.

Q. Was your brother, Robert C. Wood, interested in that business at any time? A. No, sir.

Q. Never has had any interest in your business? A. No, sir.

Q. What was your business prior to entering into this bond business? A. I was with White, Weld & Co., bond salesman for them.

Chairman Thompson.— Where are they?

Mr. Wood.— 14 Wall.

Q. That is Alec White? A. Yes, sir; of Brooklyn.

Q. What business were you in prior to your entering into their employ? A. I was with Slade & Boyer for about four or five months.

Q. And prior to that time? A. I was in college.

Q. You have been in the bond business ever since you left college, have you? A. Yes, sir.

Q. Have you had any other business during that time? A. Any other business?

Q. Yes. A. No, sir.

Q. Interested in any other business of any sort? A. No, sir.

Q. Have you been connected with any corporation as a stockholder or director? A. I have owned stock in various corporations at times, but I have never been a director.

Q. Have you had any substantial interest in any public service corporation at any time during your career? A. No, sir.

Q. Never? A. No, sir.

Q. You live up in the Bronx, do you? A. No, sir; 118 East 36th street.

Q. Your brother lives there with you, does he? A. No, sir.

Q. Has he at any time? A. He has not for — no, sir, he hasn't lived there since he has been a Commissioner.

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Q. He didn't live there prior to his appointment for some time, did he? A. Let me see — he lived there in the winter months pretty much, with my mother.

Q. I supposed he was a resident of the Bronx for a good many years prior to his appointment as a Public Service Commissioner? A. We owned property up there which we sold quite a while previous to that, and then — well, we sold our Riverdale property really before that, and his residence in the winter time was with us.

Q. What address did he vote from, if you know? A. I don't know. I imagine he voted from his property he owned in the Bronx.

Q. Did he own some property there himself, or was it part of an estate in which you were interested? A. He owned it himself.

Q. I understood you to say "we" sold some property? A. It was my mother's. She owned it there quite a few years before that.

Q. That was separate and distinct from the property of your brother, Robert C.? A. Yes, sir.

Q. What did that property of your brother's consist of? A. Of a frame house on a corner up there, near Van Cortlandt Park.

Q. Was that where he lived when he lived in the Bronx? A. I don't know whether that was his regular residence or not.

Q. Did you see him frequently from time to time? A. No, sir.

Q. Rarely? A. Yes, sir; I didn't see him very much.

Q. When did you first know of the fact that he was appointed or about to be appointed a Public Service Commissioner? A. I think he told me — I don't remember the exact time when he told me. It was when he knew it himself first, I think, as far as I know.

Q. Whereabouts were you when he told you that, do you recall? A. No, sir; I don't remember.

Q. Do you remember what the conversation was on the subject? A. No, sir.

Q. Do you remember any conversation that took place between you at the time? A. No, sir; I don't.

Q. Was there anything said at that time about his having an interest in corporate stocks which it would be necessary for him to dispose of? A. I don't remember at that time, no.

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Q. Was there a time when he said to you he had an interest in stocks which he would have to dispose of? A. Well, just prior to the closing up of the Northwestern Construction Company, I remember having a conversation with him, and he asked me to take it over, and to wind it up for him.

Q. For him? A. To take it over for that money which he owed me, and to dispose of it.

Q. And he owed you some money, did he? A. Yes, sir.

Q. How much? A. I loaned him thirty-five hundred dollars?

Q. When was this loan made? A. In the winter preceding his appointment.

Q. Did you take any promissory note for that amount? A. No, sir.

Q. A mere verbal transaction? A. Yes, sir.

Q. Any memorandum made of it anywhere? A. No, sir.

Q. Any agreement as to when it should be repaid? A. As soon as he was able to.

Q. No definite time? A. No, sir.

Q. And he suggested to you that you take the Northwestern Company over and wind it up? A. Yes, sir.

Chairman Thompson.— Is that all he owed you?

Mr. Wood.— Yes, sir. Thirty-five hundred dollars was all he owed me.

Chairman Thompson.— Did you ever loan him any other money?

Mr. Wood.— No, sir.

Chairman Thompson.— That is the only thing he ever owed you for?

Mr. Wood.— That is the only thing I ever know of.

Q. Has that loan been paid back now? A. Yes, sir.

Q. In full? A. Yes, sir.

Q. When was it finally paid? A. I received my last check, at least the last note of the Northwestern Construction Company, on, I think it was, April 5th of last year.

Q. Northwestern Construction Company note, did you say? A. Yes, sir.

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Q. What was that note given for? A. In the sale of the company, Banks agreed to pay me three thousand dollars, and the first note was for four hundred and fifty dollars, and the subsequent notes were for two hundred and fifty each, and the last note was four hundred dollars, which cleaned up the three thousand dollars, and that paid off the three thousand dollars.

Q. How frequently were those payments made? A. Once a month.

Q. So there was a note paid to you every month? A. The second of every month, if I remember correctly.

Q. Just how were those payments made to you, Mr. Wood? A. What do you mean, on the notes?

Q. Yes. A. They were paid in a note to me.

Q. You took the notes? A. Yes, sir.

Q. When the notes matured and came due and were paid, how were they paid to you, by whom? A. They were paid to me by check from Mr. Banks.

Q. From the company? A. Yes, sir; from the company. I forget who signed the checks.

Q. Were they drawn upon the company's account? A. I don't remember that.

Q. Drawn by Banks? A. I don't remember that.

Q. Upon what bank were they drawn? A. I don't remember that.

Q. Do you remember who signed them? A. I wouldn't swear to it, but the president of the company, as I remember it, signed them. The cancelled checks were all turned in.

Q. You received those checks and deposited them to your credit, did you? A. Yes, sir.

Q. In your bank? A. I used them in paying off that loan.

Q. I ask you if you deposited them in your bank? A. Yes, sir.

Q. And credited, each time a check was given you, credited the amount of that check to the indebtedness of your brother? A. Sure I did.

Q. What bank did you deposit those checks in, Mr. Wood? A. I deposited those checks — they were deposited in my account in the firm, and I think deposited in the First National Bank.

Q. You deposited the checks to the credit of the firm account? A. No, sir. I had the checks deposited in my firm to my account.

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Q. At your office? A. Yes, sir.

Q. Your broker's office? A. Yes, sir. I suppose they went in the First National Bank. That is our bank.

Q. The account of the firm is kept at the First National Bank? A. Yes, sir.

Q. Is it your understanding that the checks received from Mr. Banks from the Northwestern Construction Company by you, when received were deposited to your credit with your firm? A. Yes, sir.

Q. And cleared through the First National Bank? A. That is my understanding of it.

Q. How many of those notes were there? A. First, if I recollect, the first was for $400, and the ensuing ones for $250 each, and the last for $400.

Q. Will you tell us how many of those notes there were; make a computation, and tell us how many of those notes there were? A. It doesn't seem to work out exactly right mathematically. I know there were $450 first, and then the last $400, and that is $850, and the rest I thought were paid in checks of $250 each.

Q. That would be $2,150 left, and you think that was equally divided, the rest? A. I thought it was, but perhaps it wasn't. That was my best recollection of it.

Q. Eight times 250 would be $2,000 even, wouldn't it? A. Yes.

Q. And that would leave a hundred and fifty dollars? A. Yes, sir. There must have been one paid some other way.

Q. Do you recall how that was paid? A. No, sir.

Q. Did you have a note of a hundred and fifty dollars? A. I don't remember. I have no recollection of it.

Q. About what was the date of those notes; about when were they given? A. The first one — June 2nd, the transaction went through, and I think it was every month after that, and I think payments were made every month after that.

Q. The 2nd of June? A. Yes, sir; June 2nd, 1914, and after that I think it was every month.

Q. The first note of $450 matured the 1st of July, or 2nd of July? A. He gave it to me on that day, or it matured the next

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month; I am not sure which. I am inclined to think he gave it to me that day.

Q. You think there was a note fell due for $450 in the early part of July? A. I think so, yes, sir.

Q. And another note that fell due for $250 in the early part of August? A. Right along, I think it was, the first of every month.

Q. And another the 1st of August, and another the 1st of September? A. Yes, sir.

Q. And another the 1st of October, is the fourth? A. Yes, sir.

Q. And another the 1st of November, is the fifth? A. Yes, sir.

Q. And another the 1st of December, the sixth, and 1st of January, the seventh, and 1st of February, the eighth and the 1st of March is nine, and the 1st of April is ten? A. That works it out.

Q. Except it does not account for the hundred and fifty dollars? A. Yes, sir, one must have been for more than that.

Q. And that corresponds with your recollection, the last was paid about the 1st of March? A. The last, I think, I got the 5th of April.

Q. And the first may not have been payable under two months? A. Perhaps that is so.

Q. You have not been paid anything since the 1st of April? A. No, sir.

Q. And you parted with all the interest you had in the corporation? A. Yes, sir.

Q. At the time you made the deal with Mr. Banks, did you? A. Yes, sir.

Q. Has Mr. Banks paid you any money since that time, for any purpose? A. Not a cent.

Q. Has your brother paid you any money since that time for any purpose? A. No, sir.

Q. Did he pay you any money subsequent to his appointment as Public Service Commissioner? A. No, sir.

Q. Either in cash or by check? A. No, sir.

Q. Have you had any business transactions with your brother since the time of the transfer to you of the things which you subsequently turned over to Mr. Banks? A. No, sir.

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Q. Have you had any transactions with Mr. Banks other than in receipt from his company of the checks in payment of your notes? A. No, sir.

By Chairman Thompson:

Q. Mr. Wood, how old were you when you graduated? A. From college?

Q. Yes. A. I was twenty-three.

Q. Then you went in immediately into this first firm you mentioned? A. Yes, sir.

Q. What was their name? A. Slade and Boyer.

Q. What was your capacity there? A. Office boy at first.

Q. Did you get promoted? A. I think I was a bond-paying boy when I left.

Q. You were with them how long? A. About five months.

Q. And you went to the other people? A. Yes, sir, to White, Weld Company.

Q. How long were you with them? A. I left Slade and Boyer in the spring of 1909, and I started my firm —

Q. How many years were you with White? A. From the spring of 1909 until April 1st, 1913.

Q. What was your capacity there? A. My capacity there was I started in again as runner, and worked my way up to bond salesman.

Q. And you started your own firm? A. Yes, sir.

Q. Where did you get the capital to start in business with? A. I don't think my own private affairs are under investigation.

Q. I think to the extent of the question I asked you, they are; will you answer? A. No, sir.

Q. You will not answer? A. No, sir.

Q. Did you have any capital on your own account when you started business? A. Yes, sir.

Q. And did you have any capital when you graduated from college? A. Yes, sir; I had a little.

Q. How much? A. I don't remember how much I had when I graduated from college.

Q. Did you have as much as a thousand dollars? A. When I graduated I imagine I did, yes, sir.

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Q. Did you have two thousand dollars? A. As I said before, I don't consider my own private affairs under investigation before this Committee?

Q. You will have an opportunity to answer here, or very shortly before the grand jury, if you don't answer here. Did you have two thousand dollars? A. When I graduated from college?

Q. Yes. A. I refuse to answer.

Q. Do you refuse to answer on the grounds you are likely to incriminate yourself? A. No, sir.

Q. I instruct you to answer the question. A. I refuse to do it.

Q. You do? A. Yes, sir.

Q. Did you have, when you graduated from college enough capital with which you later started in business in January, 1913? A. I refuse to answer that also.

Q. You refuse to answer that? A. Yes, sir.

Q. On the ground it will incriminate you or tend to incriminate you? A. On the ground that my own private affairs are not under investigation before this Committee.

Q. Do you refuse to answer on the ground that it will incriminate you? A. I refuse to answer, as I say.

Q. Answer my question, or refuse to answer it; whichever you like. A. I answered that question simply for the reason I gave.

Q. Answer the question, yes, or no; or refuse to answer. A. You ask me whether I refuse to answer on the ground it may tend to incriminate me?

Q. Yes. A. No, sir; I don't.

By Mr. Lewis:

Q. Will you tell us what election district and which Assembly district you reside in and vote in? A. I live at 118 East 36th street, and offhand, I don't know the number of the election district.

Q. Do you know the Assembly district? A. No, sir; I don't.

By Chairman Thompson:

Q. How much money did you start in business with? A. I refuse to answer.

Q. On the ground it will incriminate you? A. No, sir.

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Q. You still refuse to answer? A. Yes, sir.

Q. Is your business a corporation or a partnership? A. It is a partnership.

Q. Who are the other partners? A. The other partners are Craig Colgate.

Q. Where does he live? A. He is living in New York.

Q. Whereabouts in New York? A. St. Anthony Club.

Q. Who else? A. Henry C. Parker.

Q. Where does he live? A. Hewlett, Long Island.

Q. Who else? A. F. Hamilton Davis.

Q. Where does he live? A. 57th street.

Q. Is that all the partners? A. Yes, sir.

Q. Is it an equal partnership? A. It is.

Q. What is the nature of the business? A. Dealing in investment securities.

Q. Investment securities, what class of securities do you mean? A. Bonds and stocks.

Q. Of what? A. Of corporations and municipal.

Q. What kind of corporations? A. Any kind of corporations.

Q. Public utility corporations and public service corporations? A. Yes, sir.

Q. You say you deal in them; what do you do, buy them and sell them? A. Yes, sir, and take commission orders.

Q. Do you do a banking business? A. No, sir; underwrite loans. I don't know as you call it a banking business or not.

Q. You have clients that you buy stocks and bonds for and carry their accounts on your books? A. We carry no margin accounts.

Q. That was not what I asked you. A. Yes, yes.

Q. Is one of your customers Mr. Robert C. Wood? A. No, sir.

Q. Has he ever been a customer of your firm? A. No, sir.

Q. Have you ever invested any money for him? A. No, sir.

Q. Have you ever taken charge of any of his securities? A. No, sir.

Q. Do you keep safe deposit vaults at your institution? A. Yes, sir.

Q. Has Mr. R. C. Wood a safe deposit vault there? A. No,

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sir; not that I know of. He may have; I don't know where he has it.

Q. Has he ever entrusted any money to you? A. No, sir.

Q. Or stocks? A. No, sir.

Q. Or bonds? A. No, sir.

Q. Does your mother have an account there? A. In my firm?

Q. Yes. A. Yes, sir.

Q. Does Mr. Robert C. Wood deposit his money in your mother's account? A. No, sir.

Q. Has she a safe deposit vault there? A. No, sir.

Q. Do you know of any debt Mr. Robert C. Wood owes to your mother. A. A debt my brother owes to my mother?

Q. Yes. A. He may owe money, but I don't know the amount.

Q. You don't know of any debt he owes? A. That is a dealing with her.

Q. You don't know of any debt he does owe, and you never heard of it, if he did; is that right? A. I don't know of any specific debt he owes to my mother at the moment, no.

Q. Or any that he did owe? A. No, sir.

Q. Where does your firm do its banking business? A. What do you mean?

Q. Where do they keep their account, in the bank? A. First National Bank.

Q. Where do you keep your account, in the bank, your personal account? A. I keep a personal account in the Bank of America.

Q. Have you kept your personal account in any other banks since the first day of May, 1914? A. Have I kept my account in any other bank since that time?

Q. Have you an account in any other bank? A. No, sir.

Q. Do you know Mr. Banks? A. Yes, sir, I have seen him.

Q. When did you first meet him? A. I met him a short time previous to my transferring the company to him.

Q. When was that? A. I should say perhaps a month before.

Q. A month before what? A. A month before June, 1914, somewhere along there.

Q. You met him in May, 1914? A. Yes, sir, the first time I remember meeting him.

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Q. Where did you meet him? A. I don't know.

Q. Where do you think it was? A. I don't remember where I met him.

Q. You don't remember where it was? A. No, sir.

Q. What was the transaction you had with him then? A. I remember — the first time I remember seeing him was down in Mr. Ledyard's office, when he was negotiating the taking over of the Northwestern Construction Company by me.

Q. That is the time you met him? A. That is the first time I remember of.

Q. You now remember the place you met him? A. Yes, sir; I remember meeting him there.

Q. And that is the first time you remember meeting him? A. Yes, sir.

Q. And you remember the place as Mr. Ledyard's office? A. Yes, sir.

Q. What was done there? A. We verbally agreed that I should take over the company.

Q. When did you meet him next? A. I don't remember that.

Q. Did you ever meet him again? A. Yes, sir, he was present at the meeting.

Q. What meeting? A. June 2, 1914.

Q. Where? A. In the company's office.

Q. What was done at that time? A. The company was wound up and transferred to him, and I got out of it, according to the minutes of the meeting you have there.

Q. That was at the company's office, 30 Church street? A. Yes, sir.

Q. When did you meet him next? A. I don't remember.

Q. Did you ever meet him again? A. Never except casually.

Q. Where casually? A. I don't remember.

Q. Then he did not pay this money to you? A. He didn't pay it?

Q. No. A. He sent his notes up.

Q. How? A. By a boy, or I sent down for them. I don't remember which.

Q. All sent up at one time? A. Each month.

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Q. Didn't you take those notes on the second of June? A. Yes, sir. I meant his checks when I said notes.

Q. What did you do with the notes? A. Put them in a safe deposit vault.

Q. Where? A. In the Bankers' Trust Company.

Q. That is where you have a safe deposit vault? A. Yes, sir.

Q. And you put them in there? A. Yes.

Q. Then you say you got checks from Banks? A. Yes, sir.

Q. How did they come? A. Either sent down for them to the office or sent them up.

Q. When they came back, how did they come, who brought them? A. What do you mean, when they came back?

Q. The checks came to you? A. Yes, sir.

Q. Who brought them to you? A. I say either my own boy or one of Banks' men brought them to me.

Q. Did you know the man in any case brought them up? A. No, sir.

Q. Was there any man you knew brought them? A. No, sir.

Q. Every time they were brought by the boy, you sent for the check or some man brought them you did not know? A. Yes, sir.

Q. Until they all came? A. Right.

Q. Don't you remember the bank they were drawn on? A. No, sir.

Q. What did you do with the checks? A. Deposited them in my own account in the firm.

Q. That is Colgate and Parker? A. Yes, sir; Colgate, Parker & Company.

Q. And then what was done with the checks, what did your firm do with them? A. Deposited them.

Q. Where? A. In the bank, First National Bank, as far as I know.

Q. Then what happened, anything? A. Nothing.

Q. Were they paid? A. Yes, sir.

Q. In the regular course? A. Regular course.

Q. All of them? A. Every one of them.

Q. Did you ever have any communication with Banks on any of them? A. No, sir.

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Q. Did he ever ask you for any time on any of them? A. No, sir.

Q. You never had any negotiations after that time with him whatever? A. No, sir.

Q. And never saw him and had any negotiations with him whatever? A. No, sir.

Q. After that time? A. No, sir.

By Mr. Lewis:

Q. Mr. Wood, when you sold out the business to Mr. Banks, did you sell him the capital stock of the company? A. Yes, sir.

Q. And you retained, I think, in accordance with this memorandum of agreement which you have submitted, you retained the accounts receivable, did you not? A. Yes, sir.

Q. Did you retain any other of the assets of the company? A. No, sir.

Q. Was there any cash on hand belonging to the company at the time of the sale? A. Yes, sir; there was cash in the bank, I think a thousand and eighty odd dollars, something like that.

Q. What became of that? A. I used it to pay off the bills.

Q. Then you did retain in addition to the accounts receivable, the cash on hand, did you? A. Yes, sir.

By Chairman Thompson:

Q. What did you do with that cash? A. I used it in cleaning up the debts of the company.

Q. Where did you put it? A. In the bank.

Q. What bank? A. Deposited with my firm.

Q. What did the firm do with it? A. Deposited it in the bank.

Q. What bank? A. First National Bank.

Q. To the firm account? A. Yes, sir.

Q. When you disbursed this money there, how did you disburse it? A. I paid bills as they came in.

Q. By check? A. Yes, sir.

Q. On your firm? A. Yes, sir.

Q. Your firm has checks drawn on, does it, like a bank — do you draw checks on your firm? A. No, sir.

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Q. What do you do? A. Nobody has a check account with our firm. The checks were signed by the firm and charged to my account.

Q. You paid them with firm checks? A. Yes, sir; I did.

Q. Did you receive any moneys on this agreement here from these accounts that were turned over to you? A. Yes, sir; my recollection is I received about all of them.

Q. Received them all? A. Yes, sir; I think so.

Mr. Lewis.— They are Cazenovia Electric Company, $4.28; T. A. Gillespie, $6.60; R. Hoe & Co., $38; Interborough Rapid Transit Company, $92.50; Long Island Railroad Company, $3.75; New York and Queens County Railway Company, $231.63; Public Service Electric Company, $19.31; Southern Pacific Company, $100; Interborough Rapid Transit Company, $70; total, $566.07.

By Mr. Lewis:

Q. Do you remember what the amount of the liabilities of the company was that you had to pay? A. No, sir; I don't.

Q. Did you have a schedule furnished to you of those liabilities, bills payable? A. I did not, no.

Q. Did they equal the amount of these accounts receivable? A. Approximately, yes.

Q. How far would they vary from that, have you any recollection? A. Let me see, now — I think that the liabilities — the cash in the bank and those were just about — they offset the bills I had to pay.

Q. Did you have a list of the total liabilities? A. Yes, sir; I did have a list.

Q. Taken from the books of the company? A. I think it was, yes, sir.

Q. Have you that list in existence? A. I don't know whether I have or not.

Q. Do you remember the names of any of the creditors of the company to whom you paid the accounts payable? A. No, sir; I don't.

Q. Have you any record that will show to whom they were paid by your checks, or otherwise? A. Yes, sir; I can get those names for you.

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Q. Will you do so? A. Yes, sir. Do you want me to get them right away?

Q. I want you to remain here for a few minutes. A. Very well.

(Witness temporarily excused.)

WILLIAM C. BANKS, recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Banks, when you purchased the Northwestern Construction Company, how did you pay for it? A. By notes.

Q. How many notes were there? A. The first note I believe was $350 and then there was a series of notes for $250 each and the last note was for $400, amounting to $3,000.

Q. When was the last note paid? A. April, I believe, 1915, about April 2nd.

Q. Did you pay these notes by check or in cash? A. By check.

Q. And how were they transmitted to Mr. Wood? A. Mr. Wood would send a boy to my office the day the note was due and with the note and I would hand the boy the check.

Q. And did you do that always promptly? A. Yes, sir.

Q. In every instance? A. Yes, sir, except when the note was due Sunday or Saturday, and it was due the following day.

Q. Was there a time when you asked for an extension on any of those notes? A. One.

Q. When was that? A. I think the last note I asked an extension and I called Mr. Wood up, and the note was then, I believe, a day overdue, and the date of the check I think will cover it.

Q. Did you get an extension? A. I got it for a couple of days, yes.

Q. Did you see Mr. Wood in that transaction at all? A. I called him up, I believe.

Chairman Thompson.— Which Wood?

Mr. Banks.— P. E. Wood.

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Q. Did he come to see you on the subject at your office? A. Not that I remember.

Q. Have you testified in this proceeding that he did come to your office and insist upon payment? A. No, sir.

Q. Haven't you so testified? A. I don't think so. I testified he insisted upon the payment of the note when it was due, over the telephone.

Q. Didn't you testify when you were on the stand previously in this investigation that Mr. P. Erskine Wood came to your office and refused to extend the time? A. I don't think so, if I did, it was wrong.

Q. Did you have the money on hand with which to pay it? A. I don't think I did at that time.

Q. Didn't you testify you had to borrow some money to pay it? A. At the time, yes, sir.

Q. Didn't you say you borrowed that money and paid Mr. Wood because of the fact you didn't have money on hand and because of the further fact he insisted upon immediate payment? A. I don't know as he was very insistent about immediate payment.

Q. What did you testify to? A. There was one particular note about three days overdue, and I wasn't in the office, and I was short and called him up, and said "Let the thing go for two or three days," and he said the thing was due and he had to have the money, and I said "send the boy up."

Q. He did not come to your office? A. No, sir, he came once, right after the transaction was closed and brought up the notes, I think, maybe. I know I only saw him once or twice after.

Mr. Lewis.— I think that is all for now, Mr. Banks. You are now excused.

ROBERT C. WOOD, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. I show you the schedule — I hand you a schedule of your withdrawals from the bank account in your name in the Lawyers' Title and Trust Company? A. Yes, sir.

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Q. You note items checked under the head withdrawals, or charges? A. Yes, sir.

Q. Will you tell us to whom the check of June 20, 1914, for $451.20 was made payable? A. I haven't got the check here, but I think it was to my brother.

Q. To your brother? A. I think it was — wait a moment. No, I think that was for my insurance policy in the Penn Mutual. I think that was it.

Q. I call your attention to an item of August 6th, $452.25; to whom was that made payable? A. I think — I am talking from recollection, but I think it was to my brother.

Q. For what purpose? A. Paying a loan he had made.

Q. How much was the loan? A. I think he lent me $3,500.

Q. Didn't you turn over to him the ownership of the Northwestern Construction Company in payment of that loan? A. Yes, sir, but the note had not been paid, and I also owed my uncle and my brother-in-law some money, and they directed it to be paid to my brother and he turned it over to them, so this is part payment on that account.

Q. How much did you owe to your uncle and brother-in-law? A. I think altogether it was about thirteen or fourteen thousand dollars, the three of them altogether.

Q. Thirty-five hundred dollars to your brother? A. Yes, sir.

Q. Around ten thousand dollars to your uncle and brother-in-law, when was that borrowed? A. That was borrowed previously. I guess six months before this, as I remember it.

Q. In other words, you borrowed ten thousand dollars from your uncle and brother-in-law, and thirty-five hundred dollars from your brother about six months prior to your appointment as Public Service Commissioner? A. About that, yes, sir.

Q. What was that money used for? A. I used it partly in the business and partly for personal matters.

Q. How much did you use in the business? A. Several thousand dollars.

Q. About how many thousand? A. I don't remember exactly, Senator.

Q. Was it five or ten or two or nine or six? A. I don't remember that.

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Q. What proportion of that; can't you give us some idea? A. It was several thousand, and that is as near as I can come to it.

Q. Do you mean to say you put several thousand dollars in the business of the Northwestern Construction Company? A. I guess it was — we owed some money at that time. I think it was two or three thousand.

Q. What was your uncle's name? A. R. R. Colgate.

Q. Is he connected with the firm of Colgate, Parker and Company? A. No, sir.

Q. Related in any way? A. He is Craig Colgate's uncle.

Q. That is the uncle of the gentleman who is a member of the firm of Colgate, Parker and Company? A. Yes, sir.

Q. Did you pay any money into the business of the Colgate, Parker Company? A. No, sir, never had any interest in it.

Q. How much do you say of the thirteen or fourteen thousand dollars you borrowed six months prior to your appointment as a Public Service Commissioner you put into the business of the Northwestern Construction Company? A. As I remember it, about a couple of thousand dollars.

Q. What did you do with the balance? A. That was a personal matter.

Q. Is there any reason why you should not relate it and show what became of that money? A. Yes, sir; that is my personal business before I went on the Commission.

Chairman Thompson.— That does not make any difference.

Mr. Wood.— That is my personal business.

By Chairman Thompson:

Q. Do you refuse to answer? A. Yes, sir.

Q. On the ground it will tend to incriminate you? A. No, sir. It is my personal business.

Q. You have no right to keep it; it is a matter we are inquiring about, and perfectly within our jurisdiction? A. I do not consider it is within your jurisdiction, Senator.

Q. If you think we have no jurisdiction, I will let you find out. A. I am perfectly willing to have you do so.

Q. This is a matter that concerns you since you went on the Public Service Commission? A. I do not think so.

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Q. You understand you are liable to be punished for contempt for refusal to answer? A. I understand you say so. I take your word for it.

Q. You realize whatever power there is, do you? A. Whatever power there is there is.

Chairman Thompson.— We instruct our attorneys to institute proceedings to punish this witness for contempt.

By Mr. Lewis:

Q. What was the name of your brother-in-law? A. Beekman Winthrop.

Q. Where does your uncle live? A. Sharon, Connecticut.

Q. Where does Beekman Winthrop live? A. Westbury, Long Island.

Q. Has he an office in the city? A. Yes, sir.

Q. Whereabouts? A. 40 Wall street.

Mr. Lewis.— I call upon the sergeant-at-arms to serve a subpoena upon Beekman Winthrop at once.

Q. You say the payment of August 6th, $452.25, appearing under the head of withdrawals or charges in this account, was made to your brother? A. As I remember it, yes.

Q. Either for himself or for the account of your uncle or your brother-in-law? A. That is right, as I remember it.

Q. Which was it; which was it for the benefit of, that payment, your brother, or your uncle or your brother-in-law? A. I left that to my brother.

Q. Did you understand that you owed your brother anything at that time? A. I owed them all this money and I paid it to my brother at their direction.

Q. You had transferred the stock in the company to your brother? A. Yes, sir.

Q. And you had transferred it in payment of your indebtedness of thirty-five hundred dollars? A. Yes, sir.

Q. And didn't that close that transaction entirely and release your debt to your brother by the transfer of that stock? A. As far as that — that is only three thousand dollars out of fourteen.

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Q. You didn't borrow fourteen thousand from your brother, did you? A. I borrowed from all three.

Q. What did you borrow from your brother? A. Thirty-five hundred dollars.

Q. You heard your brother testify to that, did you not? A. I don't know whether I heard him or not. I came in late, but I borrowed that from him, I know.

Q. You paid that back to him, at least to the extent of three thousand dollars, by the transfer of the corporation of which you were the owner? A. Yes, sir.

Q. And if anything remained owing to him it couldn't have exceeded five hundred dollars could it? A. No, sir.

Q. You paid him $450 on — June 20th you paid him $451.20? A. I think that was my life insurance.

Q. In August you paid $452.25 to your brother? A. At the direction of my uncle and brother-in-law.

Q. What did your uncle and brother-in-law have to do with the —

Chairman Thompson.— You be careful here, because if you don't make complete answers to these questions you or your brother will have an opportunity to answer a certification of this record to the district attorney of this county, because one of you have testified falsely here, and I do not know which it is. You have played and fooled with this Committee long enough, and it is time you got down to telling the truth, and you open up the situation, if you think you are competent to be a Public Service Commissioner or entitled to confidence in this community, and you answer the questions carefully.

Mr. Wood.— I have shown you everything you wanted, and I resent the insinuations you are throwing out.

Q. You sold your business to your brother for $3,000? A. Yes, sir.

Q. At the time you owed him $3,500? A. Yes, sir.

Q. That left a balance of $500 due him upon your debt to him? A. Yes, sir.

Q. And on August 6th you gave him a check for $452.25? A. Yes, sir.

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Q. That left a balance of a little less than $50 still owing to him? A. My understanding with him was that he could either take that himself or pay that to my uncle or brother-in-law, and they had told me to send the money to him that I owed them.

Q. And you can run along the other items; on August 22nd you will note an item of $450? A. Yes, sir.

Q. To whom was that paid? A. As I remember, it was paid to him.

Q. To your brother? A. Yes, sir.

Q. And you have testified, I think, that the total indebtedness to your brother and your uncle and your brother-in-law was thirteen or fourteen thousand dollars, which? A. Between those two figures.

Q. Between thirteen and fourteen thousand dollars? A. Yes, sir.

Q. And out of that you paid $3,000 by the transfer of this stock? A. Yes, sir, that is right.

Q. That would leave between ten and eleven thousand dollars remaining unpaid, would it? A. If you have figured it correctly. It is a mere matter of arithmetic.

Q. On September 4th you paid $450 again, did you? A. Yes, sir.

Q. Do you know anything definitely as to whom that was payable? A. That went for the same purpose.

Q. And again on September 23rd? A. Yes, sir.

Q. And on October 6, $455? A. Let me see — I don't know whether that item went there or not. It probably did.

Q. Is that you best recollection? A. Yes.

Q. And on October 22nd $410? A. I think that — yes, I think that did too.

Q. Have you paid your brother and your uncle and your brother-in-law in full, up to this time? A. Yes.

Q. They are all paid off, are they? A. Yes, sir.

Q. When was the payment completed? A. As I remember it, about last July.

Q. Now, on November 7th, 1914, there appears to have been a check drawn for $456? A. Yes, sir. I see it down here.

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Q. And was that drawn for the same purpose? A. I think it was.

Q. And on November 21st $450? A. Yes, sir.

Q. Was that for the same purpose? A. I think it was, yes, sir.

Q. December 5th, 1914, an item for $485; what do you say as to that? A. That went for the same purpose.

Q. And on December 21st an item of $466.25? A. Yes, sir, I think that went for the same purpose.

Q. January 8, 1915, $450; did that go for the same purpose? A. I think it did.

Q. January 22nd, $450? A. Yes, sir, that went to the same place.

Q. On February 6th, 1915, $460.30? A. I don't remember that particular item. I remember an item of about $450 at that time. It was about that.

Q. There may have been some interest you provided for? A. No, sir.

Q. Was the loan with interest? A. I believe there was some interest added to it, yes.

Q. And on February 24th another item of $450? A. Yes, sir.

Q. On March 6th an item of $500? A. As I remember it, yes, that was the same purpose.

Q. And on March 23rd an item of $450? A. Yes, sir, I remember, that was the same purpose.

Q. April 6th an item of $496.89? A. That was for the same purpose.

Q. April 27 an item of $455? A. Yes, sir, that is the same purpose.

Q. May 7th an item of $450? A. Yes, sir, that is for the same purpose.

Q. Now, an item of $320.20 on May 25th, what was that for, do you know? A. That is for the same purpose, I think.

Q. And June 17th, an item of $318.10? A. I think that was my life insurance again there.

Q. An item of June 22nd of $450? A. I think that was for the same purpose. Then I think that about cleaned it up.

Q. And July 9th an item of $495? A. I sent my mother a check, I think, about that time.

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Q. For how much? A. I think it was $450, and they have evidently got another check in there.

Q. What is the item of $495 representing? A. I don't know what that represents.

Chairman Thompson.— Have you your canceled checks?

Mr. Wood.— Some of them, yes.

Chairman Thompson.— Have you got them all?

Commissioner Wood.— I have some of them here.

Chairman Thompson.— Turn them over to Senator Lewis.

(Witness hands canceled checks to Mr. Lewis.)

Chairman Thompson.— Have you all the canceled checks on this account?

Mr. Wood.— I don't know. I have a good many of them.

Chairman Thompson.— What became of the rest of them?

Commissioner Wood.— I have them all, for a year back.

Q. Have you them here? A. No, sir, but I can get them. I think he has evidently lumped, and if there are two checks under a certain date he has evidently put them in as a lump figure there.

Q. You think the item of July 9th, $495, was paid on this account?

Chairman Thompson.— Will you give Mr. Morse an order to go and get them?

Commissioner Wood.— No, sir, I have to go and look for them. They might be in my office. I will get them.

Q. What do you think of that item of $495? A. I think it is an item of $450 and some other smaller checks with it.

Q. Look at item July 21, 1915, $549.90, and tell us what that is, if you can? A. I think that is also two or three checks. I don't remember that.

Q. You don't think that went to the payment of your brother? A. I think I probably paid that to my mother.

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Q. What was the occasion of your paying that to your mother? A. I wanted to give her some money.

Q. Did you owe her at that time any money? A. Yes, sir.

Q. How much? A. I don't remember exactly how much it was.

Q. One hundred dollars or five thousand dollars? A. I think it was probably about twelve or fifteen thousand dollars I borrowed from her, and paying her back.

Q. When was that borrowed? A. Some time ago, a matter between my mother and myself.

Q. How long ago? A. A couple of years.

Q. When was that borrowed? A. I don't remember.

Q. Where does your mother live? A. Here in New York.

Q. Will you tell us her address in New York? A. 118 East 36th street.

Q. With your brother? A. Yes, sir.

Q. And what is her full name? A. Alice R. Wood.

Q. Did you give her any note for the amount of money you borrowed from her? A. No, sir.

Q. Can you tell us what you used that money for? A. I consider that my personal business.

Chairman Thompson.— Will you answer the question?

Commissioner Wood.— No, sir. That is two years before I went on the Commission.

Chairman Thompson.— That doesn't make any difference. This Committee has a right to make an inquiry; our inquiry is not limited to the time you went on the Commission, in order to find out your qualifications to become a Public Service Commissioner. We will have that settled. If you don't care to admit it, we will settle that question.

Q. As I understand your recollection is that the item of $544.90 was paid to your mother? A. Yes, sir.

Q. By a check drawn to her order? A. You have it right in front of you, Senator.

Q. I have here a check drawn by you to the order of Alice R. Wood dated July 19, 1915, for $450. A. 1915?

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Q. Yes; I don't find any check for $544.90. A. That is the only check I have of that size. I will look it up and let you know.

Chairman Thompson.— Get all the checks you have, whatever they are.

Commissioner Wood.— All right. I probably drew it and it did not go through until the 21st.

Q. Your check of July 19th for $450 to the order of your mother was paid on July 21st, 1915, but I do not find any check among those vouchers which you have submitted for the sum of $544.90. A. Then it is probably some other checks are there. There are more checks.

Senator Towner presiding.

Q. Your account, as shown by the — check of July 21st, paid on July 21st, of $544.90, seems not to be among the checks which you have submitted, but I do find a check among those you have submitted of July 19th for $450; what have you to say in explanation of that, if anything? A. That is July 21st —

Q. A check of $544.90 was paid by the Lawyers Title and Trust Company of New York, a check of $544.90 drawn by you was paid on July 21st? A. I don't think that was one check. It say "withdrawals or charges." There is evidently two or three checks there.

Q. You think that includes the check of $450 drawn by you on the 19th, and which you have produced, do you? A. Yes, sir, because I know it does.

Q. August 5th there appears to have been a withdrawal of $485, and no check submitted by you for a like amount. A. I think that is two or more checks on that day.

Q. On the 3rd of August you drew a check to the order of your mother for $382.95? A. Well, there are the checks there. I don't know why they don't tally here unless two or more checks came in on that date.

Q. That is the only explanation you can offer, is it? A. Yes, sir.

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Q. On August 20th a check of $485 was paid by this company for which I find no corresponding check to your mother? A. A check or checks?

Q. I do find one of August 18th to your mother of $450, a difference of $35? A. It must have been, and another check drawn then. There must have been another check drawn then.

Q. The check of September 8th of $450 you say was paid to your mother, do you? A. Yes, sir. You have it right there.

Q. And the check of September 21st was paid to your mother? A. As far as I remember. You have it there also, I think.

Q. The check of October 8th of $450, was that paid to your mother? A. If it is there, it was, yes, sir.

Chairman Thompson resumes the chair.

Q. It is not here. A. I do not see any $450 of October 8th.

Q. I am mistaken; it was September 8th. A. Yes, sir.

Q. The check of October 20th, $457.40, was that to your mother? A. It must have been two or more checks of that date, but there must have been one there for about $450.

Q. Have you paid anything to your mother since that date of October 20th A. I see there on November, I think there was some in November, yes.

Q. Paid November 9th? A. I think so, yes.

Q. How much did you pay to her at that time? A. I think $450.

Q. And again on November 22nd? A. Yes, sir.

Q. Have you paid anything since the first of December to your mother? A. No, sir.

Q. Do you know what she did with the checks that you gave to her? A. I presume she deposited it.

Q. Did she return any of them to you? A. They came back to me in the course of business. I mean, when they were paid by her bank.

Q. Do you know in what bank she deposited them? A. I think it is the Second National Bank.

Q. You have no account at the Second National? A. No, sir.

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Q. Where is your account, other than the Lawyers Title? A. The 23rd Ward Bank and Commercial Trust Company of New Jersey.

Q. Have you an account in the Second National Bank? A. No, sir.

Q. Have you an account at the Central Trust Company? A. A very small one. It is practically closed out.

Q. Do you have a safe deposit box there? A. No, sir. Not there.

Q. Where is your safe deposit box? A. Commercial Trust Company of New Jersey.

Q. Now, Commissioner, do you realize we will either have to subpoena your mother or you will have to tell us the purpose for which this money was borrowed from her? A. I don't know — I consider that is my personal business, two years before I went on the Commission.

Q. Do you understand we have to subpoena your mother to come here and testify in this matter or you will have to testify as to what the purpose was? A. You are telling me that. I don't admit anything.

Q. Do you realize? A. I say, I hear you say that.

Q. That is as far as you will go, is it? A. Yes, sir.

Mr. Lewis.— I think a subpoena should be made out and served upon Alice R. Wood, returnable forthwith.

Chairman Thompson.— I issue such instructions. This Committee is inquiring into the qualifications of Public Service Commissioners of this district, and your qualification is under scrutiny, and it is just as important to the people whom you are supposed to represent to know the qualifications you had the day before you went on as the day after you went on, especially if there is any connection to be proved either from your bank accounts or your relatives' bank accounts before you became a Public Service Commissioner. There is no question about that, and there is no reason why the Committee is in any great hurry to get this information, because the Committee will insist upon the information they are entitled to, and delay won't make any difference. The Committee does not discontinue on the 1st of January, so there will be nothing gained by delay.

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Commissioner Wood.— I hear all you say.

Q. When were you first informed of the fact that you were to be a Public Service Commissioner? A. On May 19th, 1915.

Q. 1915 or 1914? A. 1914, I should say.

Q. From whom did you get the information? A. I think a reporter came to my house, or rather came to my mother's house, where I happened to be, and said he understood that the Governor had sent in my appointment to the Legislature.

Q. When had you heard of the fact that you were likely to be appointed, prior to that time? A. I don't remember that exactly.

Q. It was prior, was it not? A. Certainly it was.

Q. A few days? A. A month or so before.

Q. From whom did you learn of the fact that you were likely to be appointed? A. I knew my name was under consideration.

Q. From whom did you know that? A. I called on the Governor, I think it was about a week or so before.

Chairman Thompson.— Answer the question.

Q. When was the question first suggested to you, when was the proposition first made to you that you be a Public Service Commissioner? A. As I remember it, a friend of mine, Judge Tierney, of the Bronx, suggested my name.

Q. And did he tell you that he had suggested your name? A. He asked me if I would allow him to suggest my name.

Q. And that was only a few days before you were appointed? A. That was some time before. It was two or three months before. I did not know I would be appointed then.

Q. Of what court was he a judge? A. Municipal Court.

Q. In the Bronx? A. Yes, sir.

Q. President of the Board of Municipal Justices up there, was he? A. Yes, sir.

Q. How long had he held that position at that time? A. He was serving his second term, I think, about eighteen years.

Q. Was he permitted to practice law while he was a justice up there? A. No, sir, he didn't practice any law, that I know of.

Q. Did he ever practice law, prior to his appointment, do you know? A. Way back, I think, twenty years ago.

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Q. Did you know of his having been counsel for the Union Railway Company? A. I didn't know him in those days at all.

Q. Do you know he was counsel for the Union Railway Company? A. I heard since that he was, yes, but he also had his own law office down here and was a general practitioner, I believe. That is twenty years ago.

Q. Union Railway of the Bronx, is that? A. The corporate name is the Union Railway Company.

Q. But it operates in the Bronx district? A. Yes, sir.

Q. And that is the company of which Mahar is the president or general manager? A. He was then, yes.

Q. Is he now? A. It is part of the Third Avenue system.

Q. That is the Mahar to whom you transferred your stock? A. No, sir, it is his son.

Q. His son? A. Yes, sir.

Q. Have you any other cancelled checks that you are willing for me to look over? A. Yes, sir.

Q. With you now? A. No, sir. I will go and get them if you like.

Q. Mr. Mahar, is he a ball player? A. I never heard he was.

Q. Or Judge Tierney? A. I never heard he was.

Q. You are? A. I might have been twenty years ago, but I am not as young as I used to be.

Q. They tell me you slide to first base head first. A. I am not as young as I used to be.

Q. You don't play ball, then, much, nowadays? A. Once in a while, whenever I get a chance, to get the exercise.

Q. Does Mahar play, too? A. I never heard that he did.

Q. Did you ever see him play? A. No, sir.

Q. Or Judge Tierney? A. No, sir.

Q. Are they members of some club with you up in the Bronx? A. Judge Tierney is a member of the Fordham Club, and the Schnorrer Club.

Q. That is a ball club? A. No, sir, it is a very old club up there.

Q. How long have you been a member of that club? A. Ten or twelve years.

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Q. Judge Tierney been a member of that club all of that time? A. I think he has.

Q. And Mr. Mahar, too? A. No, sir; he is not a member, as far as I know.

Q. Which club are you speaking of now? A. The Schnorrer Club.

Q. What was the other club? A. The Fordham Club.

Q. Is Mr. Mahar a member of that club? A. No, sir.

Q. Is Judge Tierney? A. Yes, sir; he is.

Q. Are you a member of any club of which Mr. Mahar is a member? A. Not as far as I know.

Q. Do you know of any clubs of which Mr. Mahar and Judge Tierney are members? A. No, sir; I don't.

Q. Pretty good friends, aren't they? A. I don't know.

Q. Did you ever see them together? A. I have seen them at public dinners in the Bronx.

Q. They are pretty good friends at the dinner table, aren't they? A. No, sir; not any more than any other two men.

Q. Both prominent up there in business and social life, aren't they? A. Judge Tierney is not in business.

Q. Mahar is, and Tierney is on the bench, and it would be not unnatural they should be friendly and social, is it? A. I don't think Mr. Mahar ever goes around socially. I never saw them.

Q. Did you ever see Mr. Mahar and Judge Tierney together? A. I may have.

Q. Have you three been together at any one time? A. We probably have.

Q. Have you any recollection of any occasion when you three were together? A. We may have been, yes.

Q. Tell me what the facts are; do you remember any occasion when you and Judge Tierney and Mr. Mahar were together? A. No, I don't, offhand.

Q. You don't remember any occasion? A. I don't say we haven't been, but I don't remember specifically.

Q. Do you say you have been? A. It is possible we have been.

Q. Are you willing to swear you have been together, you three? A. I said yes, but I don't remember specifically the dates.

Q. Do you remember where you were together? A. No, sir.

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Q. Do you remember what the occasion was of your being together? A. No, sir; I think we have had some dinners up at the Fordham Club.

Q. Where you three were together? A. I mean to say public dinners. There is no restaurant there. When I said dinners, I meant public dinners.

Q. Do you mean a banquet of some sort? A. Yes, sir.

Q. Or restaurant where you three met and had a dinner together? A. Yes, sir; a banquet, and possibly some celebration, or on Borough Day.

Q. Did you talk to Mr. Mahar about the fact that you were likely to be appointed a Public Service Commissioner? A. No, sir; I don't remember it.

Q. Will you swear you did not? A. I don't remember having done so.

Q. Either Mr. Mahar, the father, or the son? A. I don't remember it.

Q. You told him you were going to be appointed, didn't you? A. I don't remember any such conversation.

Chairman Thompson.— Do you swear you did not?

Commissioner Wood.— I don't remember.

Q. You transferred your stock to the son, did you not? A. Yes, sir.

Q. Did you have any conference with him prior to the time you transferred it to him? A. No, sir. I didn't see him before. It was afterwards.

Q. You transferred it to him before you saw him, did you? A. No, sir, before. I didn't have any conversation with him before I was appointed. It was afterwards.

Q. Did you have any conversation with him prior to the time you transferred it to him, after you were appointed? A. As I remember it, I called him on the phone, and told him I was going to transfer it to him, and send it up to him, and I wanted to sell it and get rid of it.

Q. And your first suggestion to him was made by the use of the telephone on that subject, was it? A. As far as I can recollect. I wrote him on May 22nd.

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Q. What did you write him about? A. Pending my resignation.

Q. In what capacity? A. As vice-president and director of the American Sanitary Supply Company.

Q. What was his connection with that company? A. President of it.

Q. What proportion of the capital stock of that company did you own? A. I think there was a hundred thousand preferred stock, and five hundred thousand of the common. I owned sixty-six hundred dollars worth of the preferred and thirty-three hundred dollars worth of the common.

Q. You had about ten thousand dollars' worth of the stock?

Chairman Thompson.— Thirty-three thousand of the common?

Commissioner Wood.— We are talking par values now. When we talk about the actual values, the thing would be different.

Chairman Thompson.— You have now discovered the difference, have you?

Commissioner Wood.— I always did know the difference.

Q. What was the preferred stock worth? A. Nothing.

Q. Was the common stock valuable? A. No.

Q. What was the reason it wasn't worth anything? A. Because it owed so much money.

Q. To whom did it owe money? A. A certain amount to a man in Brooklyn.

Q. What do you mean? A. To my recollection, owed about thirty-five hundred dollars over there.

Examination by Senator Lawson:

Q. Who was this in Brooklyn? A. Columbia Machine and Malleable Iron Works, a man named Behler, and a certain amount, I think, to some textile company.

Q. What was the amount there? A. My recollection was seven or eight hundred dollars.

Q. That makes about fifty-two or fifty-three hundred dollars? A. Yes, sir, and then, I don't know, it owed some other little bills. I can get you that statement, but it owed more than it was worth.

Q. What were its assets? A. Some boxes.

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Q. Pasteboard boxes? A. Tin boxes, and I would like an opportunity to present a statement on that.

Q. What was the business of this company? A. The company was formed to put in boxes in cafes, one-cent boxes, but it never paid; and then the railroad rights were held by a man named Waterbury, who agreed to put in a certain number by a certain date, and he didn't do it, and the company thought they would go after the railroads themselves, but they were never successful in getting any railroad business.

Q. Did they seek railroad business? A. They did, as I remember it, for a while.

Q. Were you active in seeking that business? A. No, sir.

Q. Did you get any business from the Union Railway? A. No, sir.

Q. Mr. Mahar had an investment in the company? A. I believe he did, yes, sir.

Q. And he was president? A. Yes, sir.

Q. And he owned a large block of the stock, did he? A. I believe he did, yes, sir.

Q. What did he say when you told him you wanted to turn over your stock to him? A. He said all right. I told him I wanted to get rid of it, and out of it, and assigned it to him in blank, as assignee, and sent it up to him.

Q. All as a result of the telephone conversation? A. Yes, sir; as I remember it.

Q. Do you know whether he actually received it or not at any time? A. Yes, sir; he got it.

Q. He told you he got it? A. Yes, sir.

Q. Just why did you select him as the beneficiary of your bounty? A. I didn't know anybody else who would take it.

Q. Did he ever pay you anything for it? A. One dollar.

Q. Cash? A. Yes, sir.

Q. Did he send that back to you? A. No, sir; he gave it to me.

Q. When he saw you? A. Yes, sir.

Q. The first time he met you? A. I think it was.

Q. Did you retain it? A. I didn't frame it. I put it in circulation.

Q. You did not return it to him? A. No, sir; I kept it.

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Q. And he kept the stock? A. Yes, sir.

Q. Has he it yet, do you know? A. He produced it here, and it is one of your exhibits.

Q. He is still the owner of it, is he? A. It is endorsed to him.

Q. And he has not disposed of it? A. Not as far as I know. It is here and it is endorsed to him.

Q. Is the company doing any business? A. I will have to answer it in this way: As far as I know, Waterbury has those boxes, and he is paying a few dollars a month as rent for those boxes. The company is out of business except for that.

Q. And never has been any business since you transferred your stock? A. I don't know about that. All I know about it was what was testified here as to it.

Q. Do you know who is at present the counsel for the Union Railway Company? A. No, sir; I don't.

Q. Has Judge Tierney any connection with that company now, do you know? A. Absolutely not, as far as I know.

Q. Has he any son practicing law? A. No, sir; he only has one child, a daughter.

Q. Has he any brothers practicing law, do you know? A. No, sir.

Q. Do you know of any, or do you know he hasn't any? A. He only had one brother I know of, and he is dead.

Q. When did you open your account with the Central Trust Company? A. Several years ago.

Q. It is not a very active account, is it? A. No, sir.

Q. Do you mind telling the purpose of keeping an account with the Central Trust Company? A. I don't remember just how I did happen to open it. It is an account I have had for a number of years, and I have had several of them.

Q. You have several now, have you not? A. Well, you have seen what I have there. That is all.

Q. Are these all the accounts you have? A. Yes, sir.

Q. You have no other account in any bank? A. No, sir.

Q. Have you any money on deposit in any other bank other than what is named in this report? A. No.

Q. I name the banks and trust companies specifically: Lawyers Title and Trust Company, 160 Broadway; Central Trust

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Company, 54 Wall street; The Twenty-third Bank, 135th street and Third avenue; Commercial Trust Company of New Jersey, 15 Exchange place, Jersey City. A. Yes, sir.

Q. Do you mind telling us your purpose in opening the account in the Commercial Trust Company of New Jersey? A. I have had it there for about fifteen years, and a friend of mine was an officer at the time, and he asked me to do it.

Q. How long have you had the Central Trust Company account? A. As I remember it, four or five years.

Q. And the Lawyers Title and Trust Company account? A. About ten years, I think.

Q. And the Twenty-third Bank account? A. I had that about two or three months, a couple of months.

Q. Which is your principal bank of deposit, which you keep your active account in? A. Lawyers Title and Trust.

Q. Do you know the officers of the Central Trust Company? A. I have met them; yes, sir.

Q. Who are they? A. Mr. Wallace is president and I think Mr. Olcott vice-president, and I have known Mr. Wallace for years.

Q. Is there a Mr. Brady connected with that company? A. I don't know whether he is connected with it or not.

Q. Do you know Mr. Brady at all? A. Which Mr. Brady do you mean?

Q. Any Brady? A. I have just met them; I don't know them.

Q. Which one? A. Nicholas and James.

Q. They are the sons of Anthony N. Brady, are they? A. Yes, sir. I have just met them.

Q. Do you know that they are the principal stockholders of this Central Trust Company? A. I didn't know it, no. I know Mr. A. D. Guillard, a director down there, and I thought Mr. Talmage was a director there, and he is dead now. I knew him.

Q. Were you aware that the Bradys of the Central Trust Company were also the principal stockholders of the Kings County Lighting Company, owners of the Edison Electric Illuminating Company? A. I did not know the Bradys were largely interested in the Central Trust.

Chairman Thompson.— You didn't know that?

Commissioner Wood.— No, sir.

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Chairman Thompson.— You mean by that you know all the rest of the things he asked you?

Commissioner Wood.— What do you mean?

By Mr. Lewis:

Q. You knew the Bradys were the principal owners of the Kings County Electric Lighting Company? A. I have heard it mentioned.

Q. And the Kings County Electric Light and Power Company? A. I thought the Chicago crowd owned the Kings County Lighting Company, Knapp and Billings.

Q. You knew Brady was an owner there, also? A. I heard so.

Q. Didn't you know Anthony N. Brady was a director of the company until his death? A. I heard it as gossip. I never verified it. I have heard gossip that he was interested.

Chairman Thompson.— You are more interested in street railways and transportation than in gas and electricity, aren't you?

Commissioner Wood.— I am not interested in any of them.

Chairman Thompson.— Haven't you taken any interest in your work at all?

Commissioner Wood.— Yes, sir, and I have shown it.

Chairman Thompson.— Haven't you shown more interest in your work in reference to railroads than gas and electricity?

Commissioner Wood.— I have looked into all of them very carefully.

Mr. Lewis offered in evidence the following checks, submitted by Commissioner Wood:

Check dated July 19, 1915, drawn upon the Lawyers Title and Trust Company to the order of Alice R. Wood, $450, signed Robert C. Wood; endorsed "Alice R. Wood," and further endorsed "Received payment through the New York Clearing House, Second National Bank, City of New York; July 20, 1915."

The same was received.

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Also offered in evidence a check dated August 3, drawn upon the same company, to the order of Alice R. Wood, for $382.95, signed Robert C. Wood, endorsed in the same way.

The same was received.

Also offered in evidence a check dated August 18, 1915, drawn upon the same company, to the order of Alice R. Wood, $450, signed Robert C. Wood, endorsed "Alice R. Wood."

The same was received.

Also offered in evidence check dated September 7th, 1915, drawn upon the same company, to the order of Alice R. Wood, $450, signed Robert C. Wood, endorsed "Alice R. Wood."

The same was received.

Also offered in evidence a check dated September 20, 1915, same company, to the order of Alice R. Wood, $450, signed Robert C. Wood, and endorsed "Alice R. Wood."

The same was received.

Q. I think you said that these were all delivered to your mother and deposited by her to her credit; is that so? A. I think there is one there that I deposited for her, if that is what you have reference to.

Q. You endorsed her name upon that, did you? A. Yes, sir.

Q. This last one is endorsed "Alice R. Wood, per R. C. W." A. Yes, sir.

Mr. Lewis also offered in evidence check dated October 20, 1915, drawn upon the Lawyers Title and Trust Company, to the order of Alice R. Wood, $450, signed Robert C. Wood, endorsed "Alice R. Wood."

The same was received.

Chairman Thompson.— How do you spell Schnorrer?

Commissioner Wood.— Schnorrer — S-c-h-n-o-r-r-e-r.

Chairman Thompson.— Is that an American word?

Commissioner Wood.— I think it is a German word.

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Chairman Thompson.— What does it mean?

Commissioner Wood.— I believe it means "beggar."

Chairman Thompson.— Don't it mean "grafter?"

Commissioner Wood.— I don't think anyone better say that up in the Bronx. There are some pretty respectable people up there.

Chairman Thompson.— Isn't that Yiddish?

Commissioner Wood.— No, sir. The Schnorrer's Club is one of the best known clubs in the Bronx and founded back in 1895.

Chairman Thompson.—Were you ever in Swissvale?

Commissioner Wood.— No, sir.

Chairman Thompson.— Do you know where it is?

Commissioner Wood.— I think it is in Pennsylvania.

Chairman Thompson.— You were never there?

Commissioner Wood.— Never.

Chairman Thompson.— You said you had a deposit vault over in New Jersey?

Commissioner Wood.— Yes, sir.

Chairman Thompson.— Have you any other safe deposit vault?

Commissioner Wood.— Yes, sir.

Chairman Thompson.— Where?

Commissioner Wood.— In the Equitable Trust Company.

Chairman Thompson.— And others?

Commissioner Wood.— No, sir.

By Mr. Lewis:

Q. You didn't tell me you had a safe deposit box in the Equitable Trust Company? A. You said where my safe deposit box was.

Q. You have one in the Equitable Trust Company? A. Yes, sir.

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Q. Have you any others? A. No, sir.

Q. In New Jersey? A. No, sir.

Q. Or elsewhere? A. No, sir.

Q. Do you mean the Equitable Trust Company of New York city? A. Yes, sir.

By Chairman Thompson:

Q. Do you know the nature of an oath? A. Yes, sir.

Q. When he asks you where your safe deposit vault is, you answer by saying it is in the Commercial Trust Company of New Jersey, and you have another box, and do you think you have told the whole truth? A. Yes, sir. He said where is it, and I said there.

Q. Is there any reason why you are so guarded in your answers? A. No, sir; I don't think I have been. I have given you everything you have asked for.

Q. What date was it you borrowed the thirteen or fourteen thousand dollars you say you borrowed before you were a Public Service Commissioner? A. I don't remember the exact date.

Q. About when? A. I think it was about, my recollection, about six or eight months before I came on.

Q. Did you get it in money or checks? A. I got it, I think it was in checks.

Q. Whose check? A. I don't remember that now.

Q. Who did you borrow it of? A. I borrowed it from my uncle and from my brother-in-law and brother.

Q. Did you get it all in one check? A. No, sir, different times.

Q. How many checks? A. I don't remember now.

Q. What did you do with it? A. I deposited some of it.

Q. Where? A. I think some in the German American Bank.

Q. What did you do with the rest of it? A. Used it for certain matters.

Q. Did you deposit it anywhere? A. I told you I didn't think that was in the province of your investigation. I have given you up to now everything you asked me.

Q. You are not now? A. No, sir.

Q. Did you deposit the whole of that? A. I refuse to answer that.

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Q. Who did you turn it over to? A. I refuse to answer that.

Q. Was any of that money expended by you for the purpose of procuring your appointment as a Public Service Commissioner? A. Absolutely not.

Q. Don't you think for your own protection in this community that you ought to tell what you did with that money? A. I think you have no right to ask that question.

Q. I am trying to take care of your reputation? A. I can take care of my reputation.

Q. You still do not want to tell where you got the money? A. No, sir.

Q. Or what you did with it? A. No, sir.

Q. Did you invest it in anything that did not pay a return? A. I said I didn't think it was in your province to ask me.

Q. I don't care what you consider? A. I refuse to answer.

Q. You probably will have an opportunity to answer before the Governor, but regardless of that, we will get the information, and whatever measures this Committee can take will be taken, this matter is very important, because you are using your salary to pay it back, and we are entitled to know what you are turning your salary for. A. I hear what you said.

Q. Do you still refuse to answer? A. I do.

Q. You testified the other day that some seven or eight years ago, or whenever it was you got interested in that railroad up in the Bronx, you received quite a large sum of money, didn't you? A. Whatever my testimony was I testified correctly at the time.

Q. You received over a million dollars worth of bonds and securities, and you received $150,000 in money? A. You are questioning par value and actual value again.

Q. At that time you received over a million dollars in par value of securities and $150,000 in money? A. Yes, sir, as I remember it.

Q. And of the money you testified you returned over fifty thousand dollars? A. I said — I don't remember testifying to that.

Q. We have it on the record. A. If it is on the record I presume it is so.

Q. What did you do with that money? A. I don't remember.

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Q. Have you spent it all or lost it all? A. I think it is pretty well in circulation.

Q. You have not saved any of that down to the time you became a Public Service Commissioner? A. It is pretty well in circulation now.

Q. What did you do with it? A. I don't remember.

Q. You lost over fifty thousand dollars in cash and your share of the proceeds of over a million dollars of securities, and you have no recollection of the place you lost it? A. No, sir.

Q. And you have come way down to thirteen thousand dollars in the hole, and you can't remember anything about it? A. I don't remember transactions of ten years ago.

Q. Have you ever had any other transactions as large as that? A. That is my business, ten years ago. I refuse to answer that.

Q. As a matter of fact, you have not lost that money, have you? A. I refuse to answer that.

Q. As a matter of fact you have not given us your bank accounts in full, have you? A. I have.

Q. Every bank account? A. Yes, sir.

Q. Did you keep that money, then, in cash? A. I did not.

Q. Did you keep cash in these safe deposit vaults? A. No, sir.

Q. What do you keep in there? A. Papers.

Q. What kind of papers? A. Private papers.

Q. Securities? A. No, sir.

Q. Bonds or stocks? A. I refuse to answer.

Q. You refuse to answer whether you have any bonds or stocks? A. I have no bonds or stocks. I don't keep bonds or stocks there.

Q. In either of those private vaults, bonds or stocks or certificates? A. I refuse to answer that.

Q. You refuse to answer? A. Yes, sir.

Mr. Lewis.— Mr. Chairman, I call your attention to the fact that the witness should be directed specifically to answer the questions.

By Chairman Thompson:

Q. I direct you specifically to answer the questions. A. Whether I have any bonds or stocks there?

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Q. You refuse to answer whether you have any bonds or stocks? A. I have no bonds or stocks.

Q. Answer the question, bonds or stocks or certificates? A. I have none.

Q. In those safe deposit vaults? A. No, sir.

Q. Anywhere else? A. No, sir. I say, there is a certificate, I think, about twelve hundred dollars, for the money I advanced to the Northside Savings Bank some time ago, but that is the only certificate I have got.

By Mr. Lewis:

Q. What kind of certificates are those? A. Trustee certificates. I used to be a trustee up there.

Q. Savings Bank? A. Yes, sir.

Q. Is that similar to a cashier's certificate of deposit? A. No, sir. It is where we made up and kept a surplus of the bank in the early days, and as the bank is beginning to pay, I expect they will pay us back in time what we advanced.

Q. That is a savings bank? A. Yes, sir. When a bank first starts, the overhead charges are more than the deposits will carry.

Q. That is the purpose for which you advanced money, with others? A. Yes, sir.

Q. And for which you have received a certificate? A. Yes, sir.

Q. Which will be refunded when the bank is in a position to refund? A. I don't know. I hope so.

Q. Do I understand you to say you have an account in the German American Bank? A. I did have, at one time. That has been closed out.

Q. How long since? A. A year and a half ago.

Q. Prior to your becoming a member of the Public Service Commission? A. Yes, sir; prior.

Q. How long did you have that account there? A. We had an account there several years.

Q. Standing in your name, did it? A. I think it was in the name of the Northwestern. That was closed out.

Q. Northwestern Construction Company? A. Yes, sir.

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Mr. Lewis.— I think we will let Mr. Wood stand aside for a moment. It will be necessary to direct him to answer the specific questions which he has refused to answer, in the morning.

Chairman Thompson.— Did you pay any money to become a Public Service Commissioner?

Commissioner Wood.— Absolutely not.

Chairman Thompson.— Did you know Andrew Freedman?

Commissioner Wood.— Yes, sir.

Chairman Thompson.— Did you pay any money to him?

Commissioner Wood.— No, sir.

Chairman Thompson.— At any time?

Commissioner Wood.— I may have bought securities from him, but I never paid him any money.

Chairman Thompson.— Did you make any contribution to anybody, any free contribution to anybody, at the time you became a Public Service Commissioner or within three months before?

Commissioner Wood.— No, sir.

Chairman Thompson.— What kind of securities did you get from Mr. Freedman?

Commissioner Wood.— I have traded with him, I think, on the street in securities.

Chairman Thompson.— How lately?

Commissioner Wood.— Not for several years.

MANSFRED FUHRER, being first duly sworn testified as follows:

By Mr. Lewis:

Q. Did you loan some money to Mr. Banks at one time? A. Yes, sir.

Q. When? A. On the 18th of May, 1914.

Q. How much? A. $500.

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Q. What is your business? A. I work in the purchasing department of the Interborough Rapid Transit Company.

Q. How long have you been employed there? A. Nine years.

Q. In whose department; who is the head of the department? A. David W. Ross.

Q. When did you say that loan was made? A. The 18th of May, 1914.

Q. Did you take a note for it? A. No, sir.

Q. Did Mr. Banks tell you what he wanted the money for? A. Yes, sir.

Q. State what it was. A. He said he didn't have any money to run his business for a few months and he wanted to know if I could help him out to the extent of a thousand dollars, and I said no, that I couldn't and later on I talked to him and he said if I could let him have five hundred dollars it would help him out considerably.

Q. What business was Mr. Banks in at that time? A. He worked for the Northwestern Equipment Company.

Q. In May, 1914? A. Yes, sir.

Q. Was he an employee there or did he own that concern? A. I don't know. He represented them.

Q. Is there a Northwestern Equipment Company, is that the company that Mr. Wood had formerly been connected with? A. I don't know. I only knew it as the N. W. Equipment Company, to be exact.

Q. And that was in May, was it? A. Yes, sir.

Q. Has that money been repaid? A. Yes, sir.

Q. When was it repaid? A. In December, the same year.

Q. How was it repaid to you? A. By check.

Q. To whose order? A. My order.

Q. Was the check drawn to your order? A. I don't recall if it was made in my name or not. I believe it was.

Q. Did he pay any interest on it? A. No, sir.

Q. Just a good natured loan was it? A. Yes, sir.

Q. And stood for eight months approximately? A. Yes, sir.

Q. And repaid without interest? A. Yes, sir.

Q. Was that the only time he ever borrowed money of you? A. Yes, sir.

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Q. How long had you known Mr. Banks at this time? A. About four years.

Q. Was he dealing with the Interborough at the time? A. Yes, sir.

Q. Selling goods to the Interborough? A. Yes, sir.

Q. And had been for four years? A. The concern had. I think it was handled by Mr. Wood.

Q. Had Mr. Banks represented the concern during the previous four years? A. Not as far as I know. The only man I saw representing the concern previous to that time was Mr. Wood. After this time Mr. Banks represented it.

Q. That was Mr. R. C. Wood, was it? A. Yes, sir.

Q. In what capacity did you see him? A. Just as a salesman.

Q. And was he selling goods to the Interborough through your office? A. Very very few. It didn't amount to much, I don't believe.

Q. You have been connected with the Interborough? A. Yes, sir, for nine years.

Q. Has the Interborough been dealing with Mr. Banks continuously since he became identified with the N. W. Equipment Company? A. Yes, sir.

Q. And the business increased? A. After he took charge of it it did.

Q. After he took charge of it? A. Yes, sir.

Q. And you have been giving him a larger amount of business than you previously gave to Mr. Wood? A. Yes, sir.

Q. And it increased very materially, has it not? A. It didn't amount to scarcely anything before.

Q. But it has gained rapidly since Mr. Banks became interested in it? A. It has increased to I should say approximately about $2,200 a month, on an average.

Q. Do you know how much the account was for the month of November of this year?

(Witness takes paper from his pocket.) A. $858.

Q. What do you mean by $2,200 a month? A. I said an average of twenty-two hundred dollars a month during the year.

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Q. How much was the account during the month of October? A. $447.

Q. $447? A. Yes, sir, and 85 cents.

Q. And the month of September? A. $1,193.

Q. And the month of August? A. $3,709.

Q. And the month of July? A. $1,908.

Q. And the month of June? A. $1,736.

Q. How much for June? A. $1,736.

Q. What was the amount of business you did for the month of January, 1915, with Mr. Banks? A. $3,072.

Q. That was orders given to him for materials? A. To the N. W. Equipment for supplies.

Q. And the payment of the five hundred dollar loan was made in December, was it? A. Yes, sir, of 1914, in December.

Q. Just the previous month? A. Yes, sir.

Q. You may give us the monthly business for each of the months prior to the month of June; May, how much was it? A. May this year?

Q. Yes? A. $1,934.

Q. April? A. $2,900.

Q. March? A. $5,647.

Q. That was March, 1915, was it? A. Yes, sir.

Q. The month of February, how much? A. $3,936.

Q. You have done about thirty-five thousand dollars of business with Mr. Banks since he became identified with this company, have you? A. That is correct.

Q. Prior to that time, you had done very little? A. Very little; very little.

Q. Did you understand that Mr. Wood had a connection with this company since Mr. Banks became identified with it? A. Quite the contrary. I understood he didn't have any, and Mr. Banks told me he didn't.

By Chairman Thompson: When did he tell you that?

A. In May, when I made this loan.

Q. Did you see Banks yesterday? A. No, sir.

Q. Day before yesterday? A. No, sir.

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Q. Any time the last few days? A. Monday; I didn't talk with him, though.

Q. Haven't you talked with him on the telephone? A. No, sir.

Q. Didn't you talk with him on the telephone from here this morning? A. No, sir.

Q. Yesterday, didn't you? A. No, sir.

Q. Weren't you on the other end of the telephone when he called the Interborough office from here? A. No, sir; I never talked with him on the telephone.

Q. Did anybody tell you in the Interborough office, he had called for you? A. No, sir.

Q. Who did he telephone to? A. I don't know.

Q. Did you ever get notice he telephoned the office from here? A. No, sir.

Q. You never did? A. No, sir.

Q. How did you pay him this money, this loan? A. Here is a check. (Witness produces check.)

Q. Do you keep an account in the Astor Trust Company? A. I did at that time.

Q. When did you open the account? A. Three or four years ago.

Q. Have you any objection to Mr. Morse examining that account? A. No, sir.

Q. Give Mr. Morse an order to examine your account in the Astor Trust Company? A. Yes, sir, I will.

WILLIAM C. BANKS, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. In addition to paying Mr. P. Erskine Wood $3,000 in cash, you paid moneys to Mr. Robert C. Wood, have you not? A. No, sir.

Q. Not any moneys at all? A. No, sir.

Q. For any purpose? A. No, sir, I never paid him any money at all.

Q. In addition to paying Mr. P. Erskine Wood the amount of the notes, have you paid him any other sums? A. Yes, sir; I

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paid him some money that was due, according to that statement I gave you a copy of this morning.

Q. Collections? A. Yes, sir.

Q. How much did it amount to? A. I should think five or six hundred dollars.

Q. Is that all? A. I think that is all. That was an itemized statement showing the amounts. I forget now how much they were.

Q. Do you know when those payments were made? A. Shortly after I received the payment from the concern that owed us money, within a week or ten days. I got the money and turned it over, as I agreed to. The checks are there to cover them, I believe.

Q. Are all the payments which you made to Mr. P. Erskine Wood entered upon your books? A. I believe they are. They should be if they are not.

Q. Do you know what the item of $177.82 of August 14, 1914, was intended to pay? A. Part of those items, I guess. I wouldn't be able to identify it now. It was part of those items.

Q. Do you mean accounts receivable? A. Yes, sir; they were all made out as they came in, and I think some checks I turned over direct, and had them endorsed direct to Mr. Wood, and some checks were endorsed to the N. W. Equipment Company, and I issued the check of the N. W. Equipment Company against it.

Q. You paid in full to P. Erskine Wood, did you? A. Yes, sir; there was no chance to get away. I had to get an endorsement on a note I issued.

Q. Who is the treasurer of your company? A. W. H. Trainor.

Q. What other business has he? A. Trainor Contracting Company, trucking.

Chairman Thompson.— Mark this paper for identification.

(Paper produced by Mr. P. Erskine Wood, marked for Identification C of this date.)

Q. What did you say Mr. Trainor's connection with the company is? A. Treasurer of the company.

Q. What other business is Mr. Trainor engaged in? A. That is the only business I know of.

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Q. Is he in the carting business? A. Yes, sir, been in that business a good many years.

Q. Don't you know he does the carting for the Interborough Company? A. Yes, sir.

Q. And there is some other business that you know of? A. That is his business, carting. He does that for the Interborough and the Union Railway.

Q. Do you have financial dealings with him? A. Yes, sir.

Q. In what way? A. We borrow money from one another, and help each other out when we run short, and exchange checks.

Q. Have you borrowed money from him? A. Yes, sir.

Q. Frequently? A. Yes, sir.

Q. Large sums? A. Yes, sir.

Q. How much do you suppose you have borrowed of him since —? A. I don't know. There are a good many items, four hundred dollars, five hundred dollars, a thousand, and eight hundred, and paid back, sort of an exchange. I have borrowed from him and he has borrowed from me.

Q. Does the fact he has a contract for doing the Interborough carting have any effect on the amount of business you do with the Interborough Company? A. I think in a way it does. He has probably got a little better acquainted with the heads of some of the departments. He knows them pretty well, and I think it helps some, yes, sir.

Q. Do you owe Mr. Trainor anything now? A. Yes, sir.

Q. How much do you owe him? A. I don't know off hand, I couldn't tell you. I run short today in my bank account, and I didn't know how much I had to put up. I had to be here and I had a note to meet today at the bank, and that is a fact. He went up to the bank and gave his check for enough to meet it, I guess seven or eight hundred dollars. I don't know how much it was.

Q. Do your books show the true state of the account between you and the Trainor company? A. They should, yes, sir, except some cash items I got from him probably at different times.

Q. How much would they amount to? A. Might be a couple of hundred dollars I borrowed at different times.

Q. You say you owed Trainor a note that matured today? A.

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No, sir, I had a note matured today, and didn't have enough in the bank to meet it, and he went up to the bank and took it up for me.

By Chairman Thompson:

Q. Who is he? A. He does all the carting and hauling for the Interborough and some for the Rapid Transit, and some for Gillespie, and some for the Union Railway and some for the Queens County, and some for steel merchants, and the scrap and such as that. He does all the Interborough carting.

Q. You said yesterday that you had spent considerable money wining and dining? A. Yes, sir.

Q. Who was it with? A. I don't know, everybody I happened to take out.

Q. Give me the names of some of them you remember? A. I don't remember them all.

Q. You remember some of them? A. Well I go up in the Bronx quite a bit and go out in the Bronx quite a bit.

Q. Tell me who it was? A. I was at a ball December 2d.

Q. You said you spent considerable money wining and dining many people; tell me some of them? A. I don't like to tell you who I go out with.

Q. I know you don't, but I want you to? A. I haven't done much of that lately.

Q. Who were they? A. Railroad people in general.

Q. Who, what are their names? A. I don't care to give that.

Q. I direct you to answer the question? A. I don't care to give up people's names.

Q. Do you refuse to? A. I don't want to get those people implicated.

Q. You testified yesterday that you spent considerable money wining and dining different people, railroad people? A. Yes, sir.

Q. I now ask you to state the names of some of the people? A. Mr. Weaver of the Long Island Railroad, for instance.

Q. Who else? A. I have gone out with Mr. Delaney.

Q. Who is he? A. With the Interborough.

Q. Who else? A. I have gone out on trips with Mr. Norris, and Mr. Macy, and with Trainor quite a bit in the evening, and meet friends of his and pay checks.

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Q. Who else? A. Many of them.

Q. Burr? A. He has his own select crowd. I don't go in with him much.

Q. Who else? A. Well, that Interborough Ball, there was hundreds of them.

Q. These people you wined and dined? A. Mr. Davis. We wined and dined that night of the ball.

Q. Who was there? A. Never Wood, I will guarantee that. I don't take him out.

Q. Anybody else? A. They might be quite a few more.

Q. Mr. Johnson? A. No, no, sir, I have never taken Johnson out and bought him a dinner yet and he never did me. He has tried to, but hasn't. I never walked a block with him, on the street. You can swear on that. I know the gentleman, but I haven't walked a block with him since he has been away from the Union Switch and Signal Company.

Q. Do you know any other officers of the General Signal Company? A. I know Salmon.

Q. Did you take him out? A. No, sir. I have been out with him, in his company.

Q. Wining and dining? A. No, sir, he is not much of a wine man, but I have been in his company about three years ago when he bought a luncheon, and Mr. Wood I think was present in that company at that time.

Q. Did I understand you to say the other day you knew Mr. Prout? A. No, sir. I met him once, but I wouldn't recognize him if he were in the room now. I believe he is with the Hall Signal Company now. I made some inquiries.

Q. He was president of the Union in the spring of 1914, wasn't he? A. I think he was, yes, sir.

Q. You did wine and dine some of those Interborough officials? A. I have been to the Railroad Club, yes, sir.

Q. Are they the ones you had in mind that are railroad men that you wined and dined, railroad officials? A. Yes, sir, I have been out with W. O. Wood, president of the Queens County Railroad Company. I have been out with him.

Q. The business you say you did was about $35,000 a year? A. I did more than that. I had other business besides that.

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Q. You did pretty near $35,000 a year with the Interborough alone, didn't you? A. If those figures are correct, I think I did.

Q. Aren't the figures correct? A. The books show that.

Q. That was practically all your business since the first of June? A. No, sir. There is other business.

Q. Isn't it a fact practically all your business has been received from the Interborough? A. No, sir, I have other accounts.

Q. What you estimated at $35,000 a year, there was $30,000 at least came from the Interborough since the 1st of June, 1914? A. According to those figures that Mr. Fuhrer stated, I guess that is so. We have had other accounts besides the Interborough, as our records show. We have the Union Railway, the Third Avenue, the Queens County, the Binghamton, and the Long Island Railroad, and the New York Central, Lackawanna, Pennsylvania, and all of those are on the books besides the Interborough. Of course the Interborough is the largest business.

By Mr. Shuster:

Q. What do you figure your profits on your sales? A. The line of work we do, about 8 or 10 per cent, not over 10 per cent net. There is much competition.

Chairman Thompson.— That is after paying commission?

Mr. Banks.— I haven't paid much outside of salesmen.

Chairman Thompson.— You figure that as overhead charge, the commissions?

Mr. Banks.— Yes, sir.

By Mr. Lewis:

Q. Do you mean on a business with the Interborough of $35,000 your profit would not be over 10 per cent on that? A. No, sir, it wouldn't. They are very close buyers, and always so many people trying to do business with the Interborough you would be surprised to know how they cut prices, to get in, and D. W. Ross is the closest buyer I ever met as a purchasing agent. You come in with a price of $1.05 for an article and he will jew you down to 55c if he can, unless it is something special.

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Chairman Thompson.— You pay your agents 10 per cent commission?

Mr. Banks.— That depends, on fuses and castings where the competition is keen 5 per cent.

Chairman Thompson.— Didn't you tell Mr. Morse you paid all your agents 10 per cent?

Mr. Banks.— No, sir, some 5 and some 10, the majority 10.

By Mr. Shuster:

Q. What profit do you figure on your special work? A. I should get 25 per cent on that.

Q. What proportion of the $35,000 worth of business with the Interborough was special design? A. Why, might be 15 or 20 per cent of it. I designed those bridge contracts for the Second Avenue drawer, and earned some money, and some special switches I designed.

Q. That represents about 25 per cent profit? A. Yes, sir, that represents a pretty good profit.

Q. Mr. Lewis offers in evidence these sheets N. W. Equipment Company, Commission Account, Ledger folio 125, signed Perley Morse & Company, December 9, 1915.

The same was received and marked Exhibit D of this date.

Mr. Lewis also offers in evidence a sheet signed Perley Morse & Company, Commission Account, Ledger folio 125.

Same was received and marked Exhibit E of this date.

Mr. Lewis also offers in evidence sheet N. W. Equipment Account Summary Cash receipts.

Same was received and marked Exhibit F of this date.

Mr. Lewis also offered in evidence sheet W. C. Banks account, signed Perley Morse & Company, December 9, 1915.

Same was received and marked Exhibit G of this date.

Mr. Lewis also offered in evidence sheet N. W. Equipment Company Summary of amounts credited various accounts in Sales Ledger, signed Perley Morse & Company, December 9, 1915.

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Same was received and marked Exhibit H of this date.

(The last was in duplicate and each sheet marked the same.)

Mr. Lewis also offered in evidence sheet N. W. Equipment Company, W. C. Banks, personal account, signed Perley Morse & Company, two more sheets, also.

Same was received and marked Exhibit G, each sheet, of this date.

Mr. Lewis offered in evidence a statement of bills paid by P. E. Wood, amounting to $1,186.54.

The same was received, and previously marked for identification C of this date, and now marked Exhibit C of this date.

Mr. Lewis also offered in evidence report of Perley Morse & Company on the bank accounts of Robert C. Wood.

Same was received and marked Exhibit I of this date.

Chairman Thompson.— I have received from Commissioner Kracke, of the Department of Bridges, copies of the memorandum of the transit committee of the Board of Estimate and Apportionment, dated November 22, 1915, accompanied by letters acknowledging an opinion prepared by our Committee for him, and I have three envelopes, and will keep one myself, and inasmuch as Mr. Shuster prepared that opinion he will be interested in that report, and I desire to acknowledge the courtesy of Commissioner Kracke in furnishing this to this Committee.

Mr. Lewis offers in evidence the report of Perley Morse & Company dated December 9, 1915, supplemental to the report already presented on the account of Robert C. Wood, Commercial Trust Company of New Jersey.

Same was received and marked Exhibit J of this date.

Chairman Thompson.— Is there anything else to come before the Committee at this time? If not we will take an adjournment until 11 o'clock A. M. December 10, 1915, at the same place.

Whereupon at 5:30 o'clock P. M. an adjournment was taken to 11 o'clock A. M. December 10, 1915, at the same place.

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DECEMBER 10, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION, BOARD ROOM,
165 Broadway, New York City

The Committee met at 11 o'clock A. M., pursuant to adjournment.

Chairman Thompson acting as Chairman. A quorum of the Committee being present.

Chairman Thompson.— The Committee will come to order. That means that all these other special Committee meetings will have to be held out in the other room.

Mr. Lewis.— Mr. Chairman, the Committee ordered a subpoena issued and served upon Mrs. Alice R. Wood yesterday afternoon, and I think it might be well for the record to show as to the activities of the sergeant-at-arms and the efforts to make such service.

Chairman Thompson.— Has the sergeant-at-arms been caught being active again?

Sergeant-at-Arms.— I attempted to serve the papers yesterday afternoon about 4:20. I was informed by the butler, I assume, at the door, that Mrs. Wood was out and would not be in until late and I asked if she probably would be home this morning, and he said she certainly would. This morning I appeared and he said they were sorry but you cannot see Mrs. Wood. She is ill in bed.

Mr. Lewis.—Admission denied?

Sergeant-at-Arms.— Yes, sir.

Mr. Lewis.—And made no service.

Chairman Thompson.— She was out yesterday and ill this morning.

Mr. Lewis.— That sometimes happens.

Chairman Thompson.— Yes.

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Mr. Lewis.— I haven't any witnesses, but I expect one at any moment. I would like to take one of your famous elastic recesses for fifteen minutes.

Chairman Thompson.— Mr. Banks wants to make a statement.

Mr. Banks.— Yesterday P. Erskine Wood stated that he received no other moneys from me except the $3,000, and that he collected those outstanding accounts himself. As a matter of fact I testified here several days ago and also yesterday that I collected that money, and I in turn gave him a check for some of that, but there is a stub and a check for some of those items.

Examination by Mr. Lewis:

Q. Those items represent items you — A. Collected for the Northwestern Construction Company for which I gave Mr. Wood an additional check at that time. I just wanted my testimony to be correct. That's all. He testified he had not received any other money but $3,000. There were some other items, I did not know what they were at the time.

Q. Do you remember, Mr. Banks, whether any part of this $215.60 was from the Metropolitan Sewer Pipe Company? A. I do not.

Q. Do you remember the connection of the Metropolitan Sewer Pipe Company bill? A. No, I don't think it was.

Q. Do you remember whether any part of it was from the Magnus Metal Company? A. It is possible.

Q. Was that paid in full at one time, the Magnus Metal Company bill? A. I believe it was.

Q. How about the Columbia Machine Works and Malleable Iron Company? A. They did not owe the company anything.

Q. There is an item here of $343.96, Northwestern Construction? A. That is what the Northwestern Construction owed the Columbia people, I believe. Those are debits. That is what they owed.

Chairman Thompson.— That is the list Mr. Wood turned in as being paid out?

Q. Do you remember the people, this item of $215.58 was collected from? A. No, I could not think of that now. Various

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items, more than one. I could not think what those items were now.

Q. What is that entry on the stub explanatory of? A. Why, I wrote that — I will swear I wrote it.

Q. What does it say? Do not tell us what it means. A. Cross entry N. W. Company to account.

Q. What does it mean now? A. It means referring to the Northwestern Construction Company's account.

Q. When was that written? A. June 17th, the day the check was written. You will find the check here on July 2d of P. Erskine Wood, of $250. If you will look at every second check you will find the date. I think that is some of that safety ink, too, probably, we had in the office.

Q. That was written with safety ink? A. I imagine so. It was in the inkwell at the time — Dox Safety Ink.

Q. Have you any of that now? A. No, sir. I haven't used it in a year. Some of it over to the office now. No. I might have a bottle there — a little bit. I think it was all used up.

Chairman Thompson.— Does it last good?

Mr. Banks.— What do you mean?

Chairman Thompson.— Sticks good in the bottle?

Mr. Banks.— No.

Chairman Thompson.— Whose idea is that safety ink?

Mr. Banks.— I think Mr. Wood always used that kind of ink.

Chairman Thompson.— You mean R. C.?

Mr. Banks.— R. C. Wood. All the people down the street use that kind of ink.

Chairman Thompson.— Who do you mean?

Mr. Banks.— Brokers.

Chairman Thompson.— For what?

Mr. Banks.— I suppose for safety device, so nobody can raise a check.

Chairman Thompson.— You say Wood used that safety ink — did he have some in the Public Service Commission?

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Mr. Banks.— I couldn't tell you.

Chairman Thompson.— He kept some in your office?

Mr. Banks.— Yes, sir.

Chairman Thompson.— Who brought it in there?

Mr. Banks.— Why, I think he brought it in.

Chairman Thompson.— Wood?

Mr. Banks.— Yes, sir.

Chairman Thompson.— Did you ever have any talk with him about it — tell you where it was?

Mr. Banks.— No, sir.

Chairman Thompson.— He was the fellow brought it in first?

Mr. Banks.— I am quite sure he was. I had no occasion to buy any safety ink.

Chairman Thompson.— When he went away, did he take it away with him?

Mr. Banks.— The bottle was left on his desk.

Chairman Thompson.— Is the bottle there now?

Mr. Banks.— I don't know. If the bottle is there, I will be glad to bring it over. I think there is a part of a bottle somewhere over in the office, and if there is I would be glad to bring it over. I will be glad to leave that book here as a matter of record of evidence. It is no good to me.

Examination by Mr. Lewis:

Q. That last stub, that last entry there on the bottom, is that in safety ink? A. Why, I could not answer that. They seem to be two different kinds of ink between the top and bottom. That is probably Stafford's ink I got at that time. I think it is probably safety ink, this heavy dark ink.

Q. It doesn't look like the safety ink you testified to? A. That might be so. There was safety ink in the office and I know I used some, at that.

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Q. Do you remember what that five-hundred-dollar check, drawn to the order of cash, December 23rd? A. I think that is the check to Mr. Fuhrer.

Q. That was written in safety ink? A. I wouldn't say. That might be.

Q. It has the appearance of it? A. I don't know that difference between the two, only what I have read in the paper that you people discovered a safety ink.

Chairman Thompson.— We boosted the sale of that stuff.

Mr. Banks.— I think everybody is going to use it hereafter; ought to go in that business.

By Mr. Lewis (resuming):

Q. The other stubs on this sheet do not show any signs of safety ink, do they?

Senator Lawson.— That check was drawn two days prior to Christmas — that was not a Christmas present, was it, to Mr. Fuhrer?

Mr. Banks.— No. I guess he could use some money at the time, though.

By Mr. Lewis:

Q. Does this check book cover the entire period from the beginning? A. Yes, sir. Shows our deposits and shows what we started with, too.

Q. I do not see that you started with anything, did you? A. Yes, sir.

Q. June deposits, $660.68? A. Yes, sir. If you will follow those deposits. I was pretty close to the sails of the windward for cash.

Q. When was the last payment made to Wood? A. I think in April or March, $400. The first payment was $350, and the last one was $400 in April or March.

Chairman Thompson.— I guess we better suspend until 2 o'clock.

Mr. Lewis.— Just a moment.

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Q. Mr. Banks, I notice in running through the stubs of your checks from beginning June 16, 1914, and ending with the check of February 19, 1915, that there are one hundred two checks drawn to cash, without any memorandum of explanation. Have you anything to suggest on that line? A. That's money that went to me. Money I used myself.

Q. Have you any idea how much they amounted to? A. No.

Q. All of them drawn to you, to your own personal expenses? A. Or might have been payroll. That was payroll. Office payroll. I might have drawn checks for cash to my help.

Q. Wasn't it the custom to make memorandums or cash checks drawn to payroll? A. No.

Q. I find a great many checks on which payroll does appear. A. I have often given my clerk checks for services.

Q. You have not any real notion as to how much money you have drawn on those checks? A. No, sir; I have not.

Q. Is it as much as ten thousand? A. I would not be able to say.

Q. Five thousand? Do you suppose it is as much as five thousand? A. Probably more than five thousand.

Q. And you have not drawn that for your own use? A. Yes, sir.

Q. And used it for your own purposes? A. Yes, sir.

Q. Have you any vouchers to show for what purposes it was used? A. No, sir.

Q. Did not keep any vouchers? A. No, sir.

Q. Nothing in your books of account or records of your business to show what that money was used for? A. No, sir. Traveling expenses, my running expenses, my paying bills that I incurred myself personally.

Q. You do not keep any record of those expenses or traveling expenses? A. No, sir; I have no traveling expense record at all.

Q. Well, do you draw a salary from the company? A. Why, no. I take what I require, what I need. Sometimes I need more and sometimes I need less. All depends on how much money I have got in the bank.

Q. You do not mean to leave very much in the bank at any time? A. Why, I have taken out what I wanted as I wanted it.

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Q. You think that you may have drawn more than five thousand dollars in that way, without any explanation, without any memorandum or any record? A. Or any record.

Q. You have not any explanation to offer what that money was used for? A. I used it myself. I have got to live, pay my rent.

Q. For which you put in no voucher? A. No.

Q. Are you surprised to know it amounts to $5,908.15? A. Why, not a bit, no.

Q. Was there any reason for not preserving vouchers of these expenditures? A. No, sir.

Q. Was the money paid out in such a way that you would not care to have it appear upon the books of the company? A. No, no reason.

Q. And it was not paid out in such a way, was it? A. No, sir.

Q. You regard that as good business? A. Well, I always done business that way.

Q. Do you regard that as wise methods, wise business methods? A. It might not be the best or wisest way, but I have always done it that way for years.

Q. It is a safe way? A. I don't know whether you would call it safe or not. I have done it that way for years.

Chairman Thompson.— Why did you keep books?

Mr. Banks.— Merely as a matter of record of the money you get in.

Chairman Thompson.— What do you get out of keeping books?

Mr. Banks.— Tells where I am spending my money and how I am paying my bills.

Chairman Thompson.— It does not seem to tell you that. That is all you spend, is cash money?

Mr. Banks.— Yes.

Chairman Thompson.— The books do not show what you owe?

Mr. Banks.— Oh, yes, it does. The books do show what I owe.

Chairman Thompson.—And that is what you keep them for?

Mr. Banks.— I have got to know what I owe my creditors.

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Chairman Thompson.— Wouldn't it be a good deal more safe if you did not keep books at all?

Mr. Banks.— No, I do not think that would be safe at all.

Chairman Thompson.— In order to get within the zone of safety, you have got to keep a book and keep it the way you do?

Mr. Banks.— I would not be able to collect from my customers if I did not keep books.

Examination by Mr. Lewis:

Q. Do you make a report to the Internal Revenue Department, under the provisions of the Internal Revenue Law? A. Yes, sir.

Q. And have you paid the income tax to the United States government on the net earnings of your corporation? A. Yes, sir.

Q. How have you ascertained those net earnings? A. Taken the gross amount of business, plus my merchandise sales, expense, salary, and so forth.

Q. Plus your salary? A. Yes, office salary, and so on, what I allow myself. I have paid on that; yes, sir.

Q. Supposing an inspector of the Internal Revenue Department were to call on you with your last internal revenue tax report and ask to have it verified from the books, could you verify it? A. Yes, sir; it could be done.

Q. You think it could be done? A. Yes, sir.

Q. You think your books show, do you, accurately, information required by the Internal Revenue Department? A. Yes, sir.

Q. How will you enter these various items of $5,915? A. They will be charged to me.

Q. But will you deduct those from the gross income of the company and make a return of the balance, or will these items enter in any way into the determination of what the net income is? A. I don't know how that was done. It was done at that time by a friend of mine who wrote up the whole report, and I think it is correct.

Chairman Thompson.— Have you got a copy of it?

Mr. Banks.— Yes, I think I have.

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Examination by Mr. Lewis:

Q. You had to swear to it, didn't you? A. Yes, sir, I did.

Q. And did you take your friend's statement that it was correct? A. Yes, sir.

Q. You did not examine the books yourself? A. I gave him the result of the gross sales of the year, gross business, and my expenses I had entered up.

Q. Did your bookkeeper assist you in the preparation of this? A. I think he did; yes, sir.

Q. Does your bookkeeper know anything about what these expenditures were for? A. I don't think he does; no, sir.

Q. Now, did you make a personal income statement for the purposes of taxation? A. No, sir; I did not.

Q. Does this represent your income? A. No, sir; it does not.

Q. It does not? A. No, sir.

Q. Have you any method of determining what these moneys were used for which, according to your books, have been paid to you? A. Why, as I explained before, that money represents expense money, traveling expenses, entertainment money, odds and ends, purchases I had made for the company probably out of cash with which I reimbursed myself with cash, my running expenses, house expenses, and so on.

Q. You realize in making your personal income tax return this money appears on the books of the company to have been paid to you. That is, it appears that the checks were drawn to cash, and now you state that you had the benefit of that money? A. Why, the company had the benefit of a good deal of it. The company had the benefit of it themselves.

Q. Now, in making up your income tax return, did you tax yourself with this money or any part of it? A. I don't remember, Senator. I don't know how it was. I will look it up and see how I did it.

Q. I don't care whether you look it up or not. It is not a matter of any consequence to me.

Mr. Lewis (to Mr. Wood).— Mr. Wood, have you seen your mother this morning?

Mr. Wood.— No, sir; I have a doctor's certificate.

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Chairman Thompson.— Mr. Banks, you can appear again at two-fifteen.

ROBERT C. WOOD on the stand.

Mr. Wood.— I want to say my mother is an old lady about seventy years old. Here is a doctor's certificate. I will read it. She is sick in bed threatened with nervous prostration. I have a doctor's certificate, and I will get you an affidavit to-day, if you so desire.

Chairman Thompson.— What is she getting nervous prostration about?

Mr. Wood.— I don't know, Senator.

Chairman Thompson.— The prospects of showing up?

Mr. Wood.— I resent that question very much. You have no business to say that.

Chairman Thompson.— Don't talk back to me.

Mr. Wood.— I will every time you talk that way to me.

Chairman Thompson.— I do make the insinuation.

Mr. Wood.— Then I say you have no business to do.

Chairman Thompson.— I ask you the question as to whether the prospect of showing the public these books has given her nervous prostration?

Mr. Wood.— I resent that insinuation very much. I refuse to answer the question for the reason that it is neither legal nor pertinent; that it is immaterial and beyond the jurisdiction of the Committee; that it is not legal or pertinent to any investigation which this Committee is authorized to make, and that it relates exclusively and entirely to my personal matters and my private business affairs.

Chairman Thompson.— Where did you get that lucid statement from?

Mr. Wood.— From my counsel.

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Chairman Thompson.—And wrote it out?

Mr. Wood.— Yes, sir, I did, and I want it entered on the record exactly as I read it.

Chairman Thompson.— You have got counsel?

Mr. Wood.— Yes, sir.

Chairman Thompson.— Who is it?

Mr. Wood.— Mr. Stanchfield.

Chairman Thompson.— So you want to protect yourself in that way now?

Mr. Wood.— I am going to answer that question in that way.

Chairman Thompson.— What is your reason for it?

Mr. Wood.— I have just read you my reason.

Chairman Thompson.— No, you have not. What is your reason for trying to protect yourself?

Mr. Wood.— I am simply asserting my rights.

Chairman Thompson.— Is the Committee up near something that you do not want to show?

Mr. Wood.— I refuse to answer such questions for the reason that I have read right here.

Chairman Thompson.— Is there something in your personal transactions that you do not want the public to know?

Mr. Wood.— No, sir.

Chairman Thompson.— There is not?

Mr. Wood.— I refuse to answer the question, Senator.

Chairman Thompson.— Have you got something that you think if the public knew would hurt — would satisfy the people that you were not qualified to be a Public Service Commissioner?

Mr. Wood.— I refuse to answer that question for the reason that it is neither legal nor pertinent; that it is immaterial and beyond the jurisdiction of the Committee, and it is not legal or

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pertinent to any investigation which this Committee is authorized to make. That it relates exclusively and entirely to my personal matters and my private business affairs.

Chairman Thompson.— You are now reading again from the same statement?

Mr. Wood.— Yes, I am, and I will answer you each time you ask me that question in the same way.

Chairman Thompson.— Do you have to read it every time — wasn't it possible for you to learn it?

Assemblyman Joseph Callahan.— I am a member of this Committee, and I want to resent the Chairman's attitude in asking the questions in the way he does. I want to say that while I am a minority member of the Committee, I feel myself responsible to the public as to the conduct of a legislative Committee of which I am a member, and I do not think the Chairman's questions are either pertinent or fair to the witness, and I do not want to be considered a member of a legislative body that is unfair to any person.

Chairman Thompson.— Do you think it is unfair because it hurts the Democratic party?

Mr. Callahan.— I do not think there is any politics involved, and I think it is unfair, the manner you have assumed toward the witness.

Chairman Thompson.— If you do not think there is any politics involved in this matter, it would be nice if you did not raise that question.

Mr. Callahan.— I have not raised the question of politics, and if you wish to raise it, you are at liberty to do so.

Chairman Thompson.— You have raised it.

Mr. Callahan.— I have not.

Chairman Thompson.— Let me inform you that, notwithstanding the attitude of the party that you represent on this Committee, the investigation will continue.

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Mr. Callahan.— I want to say to you that the statement that my attitude as representing a party is false, and you know it to be false, because I have not made my statement as representing any party, and the politics of my party is not involved, and you know it. I simply say while I sit here, I do not desire to see any witness treated unfairly.

Chairman Thompson.— The Committee will come to order. I will say this is the first time an objection has been made by a minority member. I will say Mr. Wood's conduct is under examination, and if there is any member of this Committee that thinks that a public officer should not be investigated as to his personal transactions of the kind that has come to the information of this Committee, I want him to take that position and take it in public and respond back to the people that he represents.

Mr. Callahan.— I want to say publicly on the record that I am anxious that this Committee of the Legislature do everything that it possibly can to investigate, but I do not desire to have it done in an unfair way, because I do not think the Legislature desires that any Committee of it shall act in an unfair way.

Chairman Thompson.— The Committee will continue, and the questions will continue to be asked.

Examination by Mr. Lewis:

Q. How long has your mother been ill? A. I have not seen her in several days.

Q. Have you understood prior to to-day that she was ill? A. No, I did not.

Q. Do you know whether she was at the house yesterday when the Sergeant-at-Arms called at the house for the purpose of serving a subpoena upon her? A. I believe she was.

Q. That is your understanding? A. I understand so.

Q. And you understand she is at the house to-day? A. All I know is that doctor's certificate there. I was not at the house last night.

Chairman Thompson.— Mr. Wood, do you still refuse to inform this Committee as to your transactions in relation to your loans concerning which you were interrogated last night?

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Mr. Wood.— I refuse to answer the question for the reason that it is neither legal or pertinent, that it is immaterial and beyond the jurisdiction of the Committee; it is not legal or pertinent to any investigation which this Committee is authorized to make; that it relates exclusively to my personal matters and my private business affairs.

Chairman Thompson.— You are still reading from the slip of paper which was drawn for you by Mr. Stanchfield, are you?

Mr. Wood.— I told you —

Chairman Thompson.—Are you reading from that slip of paper?

Mr. Wood.— I did read from that slip of paper.

Chairman Thompson.— Do you refuse this information on the ground that it might tend to incriminate you?

Mr. Wood.— I refuse to answer the question for the reason that it is neither legal or pertinent, that it is immaterial and beyond the jurisdiction of the Committee. It is not legal or pertinent to any investigation which this Committee is authorized to make; that it relates exclusively and entirely to my personal matters and my private business affairs.

Chairman Thompson.— Still reading from the paper?

Mr. Wood.— I did.

Chairman Thompson.— That is the one Mr. Stanchfield wrote for you?

Mr. Wood.— It is the reasons I am giving you why I do not answer your questions.

Chairman Thompson.— That is the same paper that Mr. Stanchfield wrote?

Mr. Wood.— I told you it is.

Assemblyman Feinberg.— Did you understand the last question that the Senator put to you?

Mr. Wood.— I can understand English.

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Assemblyman Feinberg.— Did you understand the last question that he put to you?

Mr. Wood.— Well, he has asked so many.

(Question repeated by the stenographer as follows: "Do you refuse this information on the ground that it might tend to incriminate you?")

Mr. Wood.— I answered the question that I refused to answer for the reason that it is neither legal or pertinent; that it is immaterial and beyond the jurisdiction of the Committee; it is not legal or pertinent to any investigation which this Committee is authorized to make; that it relates exclusively and entirely to my personal matters and my private business affairs.

Chairman Thompson.— You are still reading from the paper again?

Mr. Wood.— I give you the reasons that I refuse to answer.

Chairman Thompson.— I say you are reading from the paper that Mr. Stanchfield wrote?

Mr. Wood.— I am under the advice of counsel, yes.

Chairman Thompson.— Can you be here again at two-thirty?

Mr. Wood.— I can be here again at two-thirty.

Chairman Thompson.— Will you bring the paper you have got, or do you think you can get along without it?

Mr. Wood.— I will bring anything I desire.

Chairman Thompson.—And you will be back here at two-thirty with the paper?

Mr. Wood.— If you so desire me.

Chairman Thompson.—And in the meantime I will announce for the benefit of the minority members of this Committee that this is distinctly not a judicial proceeding, and I have never been accused of, and I hope I never will be, of having a judicial attitude. That is the reason why the Chairman of this Committee has exhibited no judicial atmosphere in this proceeding. This is

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an investigation to find out facts in relation to certain public officers to hold their places in certain very important positions, and the administration of the State government, and consequently the investigation will proceed.

We will suspend until 2:30 P. M.

AFTERNOON SESSION

Senator Lawson in the chair.

The Chairman.— The Committee will come to order.

OLIVER C. SEMPLE on the stand.

Examination by Mr. Lewis:

Q. As I understand the matter, Mr. Semple, you had charge of the Kings County Lighting Company rate case from the time it began, did you not? A. I did; yes, sir. I drew the complaint before the case began.

Q. Were the complainants represented by private counsel in any way? A. They were.

Q. Who was their private counsel? A. Herbert Reeves.

Q. Did he attend the hearings regularly? A. He attended pretty fairly often, I would not say he attended regularly, certainly not every session.

Q. But from time to time? A. From time to time, and at arguments or hearings before the full Commission he was present usually, and at different times addressed the Commission.

Q. When the matter got into the Appellate Division, did Mr. Reeves give attention to it? A. I think not. I do not remember — he certainly, Mr. Lewis, did not appear or argue and as far as I know file a brief in the Appellate Division.

Q. Or in the Court of Appeals? A. Or in the Court of Appeals. I think he came to my office and we talked over one or two things at the time that I was writing briefs in the Appellate Division and in the Court of Appeals.

Q. And did he suggest the preparation of a brief by himself? A. He did not.

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Q. Of his own? A. He did not.

Q. What has been the practice, Mr. Semple, in connection with rate matters? Does the counsel to the Commission in all cases represent the complainant when the matter gets into the court on a writ of certiorari? A. I think not, Mr. Lewis; I think the counsel for the Commission prepares the return and the briefs, representing the Commission. He is called upon to make return to the writ.

Q. And the consumers or complainants cease to be represented in the court by personal counsel? A. Well, they do, unless they choose to appear. They have a right, unquestionably they would be allowed to appear and file a brief and if they chose would be allowed to be made parties, but we have never had such a case that I remember.

Q. Has there ever been a case where counsel for complainant has filed a brief in any of these rate cases, except before the Commissioner? A. I could not be sure. Certainly not in any of my cases.

Q. Then it devolves upon the counsel for the Commission to sustain the determination of the Commission when attacked in certiorari proceedings, does it not? A. Yes, sir.

Q. And that was done in this case? A. It was done in this case. This case, may I say —

Q. Yes. A. Was the first rate case which going from the Commission had ever reached the courts, and there was involved in it in the Appellate Division almost every question, constitutional and otherwise, in reference to the powers of the Commission to make a rate, and the procedure of the Commission in the making of the rate or in the conduct of the investigation, and as I remember it, there was some seven or eight different points raised by the company objecting to the order of the Commission. The Appellate Division made its decision sustaining the Commission except on, I think, two or three points, and it certified those three points to the Court of Appeals, and the Court of Appeals reversed the Appellate Division in one and I think sustained the Commission in one, and sent it back with reference to going value. Now, that, in general, represents the way in which the matter was presented.

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Q. In conducting the litigation in the courts, Mr. Semple, did you regard yourself as in any degree the counsel for the complainants? A. To the extent that it was our constant effort to sustain the Commission's order. It was our constant effort, may I say here, to see that the Commission's order was sustained by the evidence, or that the order that the Commission made was one that was justified by the evidence, and that being the case, that when it got into the courts, that the court should sustain the Commission's order.

Q. Now, that course was followed throughout all the hearings conducted by Commissioner Maltbie, was it, of the case? A. I don't know as I get you.

Q. Your policy to see that the proper evidence was presented at the hearings and proper determination reached, and then in the courts to see that that determination was sustained by the courts? A. Yes, sir.

Q. And in the hearings before Commissioner Maltbie, did you have the control of the offering of evidence yourself, or did Mr. Reeves participate in that? A. Well, as between me and Mr. Reeves, I suppose I had control. Mr. Reeves himself did, as I remember it, offer some testimony at different times, and he offered — and such as he offered I think was admitted, but I did not undertake to control him or to suggest to him that some should go in or others should not go in.

Q. Did he confer with you about the offering of evidence independent of the evidence which you had submitted or purposed to submit? A. I don't think he did. If I remember, Mr. Lewis, as a practical matter, Mr. Reeves' evidence or testimony was offered in the very early stages — the minutes will show — and after that I do not think Mr. Reeves offered any evidence, or at least not very much.

Q. Well, now, the time came when Commissioner Maltbie undertook to prepare the decision of the Commission or for submission to the other Commissioners? A. Yes, sir.

Q. Did you aid in the preparation of that decision? A. I did not, as I remember it, aid in the preparation of that decision, except so far as Mr. Maltbie might ask me questions at different times, legal questions or other questions. Mr. Maltbie was a particularly competent gentleman, especially in matters of account

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and rate-making matters, and he did not need any great assistance from me, and he did not ask for it. If he did ask for it, he got it.

Q. Was Mr. Maltbie admitted to the bar? A. He was not, unless he has been since. I don't know.

Q. Not at that time? A. Not at that time.

Q. Did Mr. Maltbie confer with you on the legal questions involved in the determination of the rate that should be allowed as set forth in his opinion and decision? A. I think he did; yes, sir. I don't know that he did on all of them. He certainly did discuss the matters with me to some extent.

Q. Do you know of his discussing the legal questions with any other member of the legal staff of the Commission? A. I don't think he did, unless he did with my immediate superior, Mr. Coleman, the chief counsel.

Q. Did Mr. Maltbie discuss with you the question of going value and an allowance to be made based upon going value? A. Mr. Maltbie did not, no. That is, not that I remember. May I say just a word? I do not want to elaborate if you do not wish me to.

Q. I am perfectly willing you should offer any suggestions. A. At the other hearing the other day, several questions were asked me which I answered yes or no, and there were explanations which I could have made which I did not make, and I did not know that you wished them.

Q. I want the truth and all of the truth. A. I did not understand I was to do other than to answer yes or no, but I hoped later I would have an opportunity to amplify.

Q. You have any opportunity to amplify.

(Question repeated by stenographer: "Did Mr. Maltbie discuss with you the question of going value and an allowance to be paid based upon going value?")

A. A very considerable part of my education on going value I owe to Mr. Maltbie, and I will say he did discuss with me at very considerable length, but Mr. Maltbie's idea was a very clear one, that going value was a thing that was to be recognized by him in the return which the company would be allowed to receive if they had suffered losses in the early years — failure to receive a fair return on an inventory by those that went into the enterprise, or

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their successors, that that should be made up to them in the rate the Commission should allow. He did not favor it as I recall it, putting a certain sum, lump sum or whatever it might be called, into the capital, which should be deemed a rate-going value on which a return of seven or seven and a half or any other per cent should be allowed or taken out of the consumers. He did discuss that matter with me to some extent, but he was very definite in his idea that going value should be recognized in fixing the rate of return, and he indicated that in his opinion, and he so decided without asking my judgment on the matter.

Q. Well, in his opinion, did he express his views sufficiently clearly so that the court in determining it, determining the propriety of the decision, must have been aware of the view which he entertained on the subject? A. I don't think he did, and I have been very sorry for it ever since, but he prepared that opinion himself.

Q. And you had no part in it? A. I had no part in it.

Q. And you think, do you, Mr. Semple, that Commissioner Maltbie did take the going value, if there was any going value in this company, into consideration in determining the rate which he established by his decision? A. I think he did, yes, and I tried my best to get the court to see it both in the Appellate Division and in the Court of Appeals.

Q. Was there evidence in the record upon which to base his conclusion that there was some going value for which an allowance was made in the rate? A. I don't think it quite true to say that he considered that there was some going value upon which he made allowance in the rate. Mr. Maltbie's mind worked in this way, if there was any deficiencies in early years, and there may have been, there was no evidence as to the early years, but Mr. Maltbie's ideas were that if they had been entitled to any return, by reason of losses in early years, he considered that that was made good by allowing them a return of seven and a half per cent. That was as far as he went.

Q. Well, was it a part of Mr. Maltbie's conclusion that the burden of showing such losses was upon the company rather than the burden of showing that there were no such losses upon the complainants? A. I think his idea was that it was upon the company to show that there was loss in earlier years, and it certainly has always been mine.

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Q. And because of the failure to show that there had been losses, he was justified in ignoring that question of going value and omitting to make allowance therefor? A. Well, I think his opinion tries to establish that, that he did not ignore going value. He certainly did not make an allowance therefor in the sense that he gave a certain sum representing it in the capital account, but he indicated in his opinion that he had the question of going value possibly in his mind as may be existing, and he intended to make return or recognition of that in the fixing of his rate.

Q. And do you think he did that, notwithstanding that no evidence had been offered on which to base a finding of going value? A. I think so. I think so from what he said in his opinion, and Mr. Maltbie was not a lawyer, and he was very definite in his ideas of what he intended to say in his opinion, and he usually said them without consultation with us in every case.

Q. Now, was any evidence offered on the part of the complainant as to the amount of losses sustained and as to whether or not such losses had been recouped by subsequent large profits? A. By the complainants?

Q. Yes. A. I don't think so. I don't seem to remember any now.

Q. Was the failure to offer such evidence due to the fact that the company itself had offered no evidence of such losses? A. If they had offered any evidence as to the experience of this company in its early years, we should certainly have endeavored to obtain any information we could with reference to that particular matter. There were many matters brought up in that case. The early history of the company was referred to, not so much with reference to its gains or losses in early years as with reference to the public lighting contract, which was a matter of very great interest and always had been to the Bay Ridge people. I should have put in evidence unquestionably, if it had been left to me. I did not always control the proof in those cases, in Mr. Maltbie's time, perhaps as fully as I have done since.

Q. Do you mean he exercised the control over what should be offered in evidence? A. He consulted with me with reference to the policy of presenting the case. I would not say that he restrained me from putting in evidence that I thought important. I am sure he did not. But his experience with reference to the

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case was apt to be controlling, and especially with rate matters with which he was a very great student and very familiar.

Q. What effort did you make, Mr. Semple, to ascertain the facts in connection with the early history of the company, of the amount of cash that was actually invested in the plant by the original company? A. We made every effort that we could think of to locate the books of the old company. We were constantly told by the firm of lawyers that represented the company, Judge Hatch in the beginning, and his successors when he retired, on account of illness, that the books had been destroyed or lost; that they did not know where they were.

Q. And by that he meant the books of the Kings County Gas and Illuminating Company? A. He did, yes.

Q. And for the period from the time it was incorporated down to the time of the merger of the two companies was accomplished? A. That is right. And in the meantime, after the matter came back from the Court of Appeals, we were endeavoring in every possible way to find out all that we could as to the early history of that company, and as to what had become of its books. I remembered from early experiences at the bar of my own, that it was the obligation of companies to make tax reports to the State authorities and to the local authorities. I remembered a most interesting case which was tried and involved the validity of the public lighting contract in that district of the Thirtieth Ward of Brooklyn, then the old town of Utrecht, and Judge Gaynor was in that case, as I remember it, and I got out the old settled case and went over there with the stenographers and gathered out of it all the facts that we could get from that source and the printed record from the Court of Appeals. We found from these tax reports, as they were subsequently offered in evidence, as you will see, a good deal of information as to their receipts, expenditures, as to the bond issues, as to the stock issues, as to the amount received from the public authorities for public lighting. And these things were quite voluminous and were very carefully analyzed by the statistician's office, and from those reports, and from the other information which was in there prepared an outline of the opinion which I think Mr. Williams has prepared with reference to going value. Certainly in the draft of facts, which I sent to Commissioner Williams, I embodied very largely the results of

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a report which Dr. Weber's office had made upon that material. May I say further in answer to that question, in reference to the efforts to obtain the books, that we endeavored to call as witnesses and put upon the stand for examination all of the officers and employees of the old company, the Kings County Gas and Illuminating Company, whom we could find, and all the officers of the company into which the same was merged in 1904, and we considered that we traced those books into the safe in the office of the company at, I think, 60 Wall street, and that they were in the safe in that office which was occupied by Mr. George O. Knap, the safe being in his office, and the combination being also in the charge of his secretary, I forget his name, and we called Mr. Knap to find out with reference to what had become of those books, and Mr. Knap said that he knew absolutely nothing about them.

Q. Was he an officer of the company? A. He was, I think, a director, or vice-president of the new company, as we call it, the present company.

Q. Let me ask you this, Mr. Semple: Was the date when those books were located in the office of the company at or about the time of the merger of the two companies? A. Yes.

Q. I interrupted you, I did not know but you had finished. A. There was one of the young men in that office whom we were particularly anxious to have a chance to examine. I forget his name for the moment, but at any rate it was stated to us by the counsel that he was in Chicago, and that they would not make any effort to bring him on, and we certainly had no means for bringing him on.

Q. Could not control? A. Had no control of him at all. I had a suspicion — I am not here to give my thoughts or suspicions — but I have definitely understood from some source that that young man was employed by the Chicago company.

Q. And do you remember who of the counsel for the Kings County Lighting Company expressed his purpose not to exercise any power or control over the appearance of the young man? A. I would not wish to say that that was the way that he expressed himself, but the counsel was Mr. Ricks, who appeared for the company, as you remember in the minutes at the supplementary hearing following the decision of the Court of Appeals.

Q. That effort to obtain the presence of the man was made at the time the hearing was pending before Commissioner Maltbie,

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or wasn't it? A. You see, Mr. Maltbie begun hearing on the 1st of April of this present year.

Q. Well, I know, but he had rendered a decision and the litigation had been had prior to the 1st of April of this year? A. Oh, yes, but after it came back from the Court of Appeals, under the direction of the Court of Appeals, a supplementary hearing was directed, chiefly, I suppose, with reference to going value, and this is one of the things I answered the other day rather briefly, and if I may be allowed, I will answer it now. It bears on two points which you asked me. One was the question whether I had brought in evidence, or an intimation by the Chairman, I think, with reference to the price of gas oil and as to unaccounted for gas, and you asked me whether I produced evidence with reference to that subject, and I said I did not. May I say now?

Q. Certainly. A. That when this case came back from the Court of Appeals, which was in the spring or early summer of 1914, on the remittitur of the Court of Appeals the case was resumed before Commissioner Maltbie, and proceeded for one or two sessions. Then the complainants and the company officials apparently had some consultations, and an arrangement was made and submitted to Commissioner Maltbie by which the further hearing was deferred from that summer of 1914 until the following April. The company meantime reduced its gas rate from a dollar to 95 cents. In that stipulation, I urged that there should be put in the privilege for me or us, rather, to examine any of these officers of the old company, some who were very old men, in the meantime, in case we could get access to some of them, and that was made part of the arrangement, and the testimony of some of these elderly gentlemen was taken during that fall or winter, but the hearing stood over and was deferred to the 1st of April, 1915, under that arrangement. In the meantime —

Q. May I interrupt you there, to ask you if you know the reason for entering into that arrangement? A. It seemed to be satisfactory to the complainants.

Q. Well, was there some concession by the company other than the reduction from a dollar to 95 cents, which operated on the minds of the complainants and led them to agree to a postponement? A. I don't know. I would be glad if you should ask Mr. Ricks.

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Q. I wanted to know if there was anything in the open on that subject, or whether it was done with a view to an effort to avoid further litigation and reach a determination which would be satisfactory to both the company and the consumers. A. May I go on for just a moment? When the matter came on the 1st of April, Mr. Maltbie, who was still then Commissioner, said to me, "Now, we must get this proof and the company's proof in before the 1st of June"— April and May, that gave us two months to finish and close that case, because the idea was that the Commission might then be in shape to make a rate in case the evidence warranted it, beginning the 1st of July. I was directed, and that order was never modified in any particular, and even when Mr. Maltbie went out and Commissioner Hayward succeeded him and took his place on the bench in this particular case, and Commissioner Hayward succeeded Mr. Williams, I repeatedly asked and said in the minutes (it appears in the minutes) that we were to get this case closed up the 1st of June, if it was a possible thing, and I crowded the company's attorneys to the same effect. Now, I asked the other day with reference to the unaccounted for gas, and gas oil question. The purpose I had in view in the putting in of evidence in that case was this: I was determined there should be evidence in that case which would sustain the order of the Commission fixing a rate at such sum as the evidence justified, and I had evidence in that case with reference to the price of gas oil, and that 4.57 or 4.58 was more than other companies were paying, and that the price that the other companies furnished a fair ground on which the Commission could find a rate for gas oil which for the period in the future for which they were fixing rate would be justified. Now, in reference to unaccounted for gas, that was gone into at very great length by the company, and I put in no evidence on the point. For this reason, the same point was raised with reference to Commissioner Maltbie's decision recently. The Commission made a percentage of eleven per cent for the unaccounted for gas. They had never made any point of objection to that in any of the court proceedings reviewing that decision. There were many points then before us in the supplementary hearing upon which evidence in that short term had to be prepared, and in which the company's evidence had to be examined, and if necessary replied to. I therefore did not feel called upon to put in evidence

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and submit anything more than was necessary to justify the decision that the Commission might make, because our practice has developed before the Commission this fact: That as is well known, no order of the Commission can be reviewed by certiorari until the company has first applied to the Commission for a rehearing, and on that rehearing was required to specify the points of error which the Commission has made. Therefore when the rehearing came on, if no question was made as to the oil contract or the insufficiency of evidence or as to unaccounted for gas, on rehearing the matter could have been fully covered, and I anticipated if the order was made to take effect the 1st of July that a rehearing would be brought on within a very few days, and the entire matter would then have been sufficiently covered.

Q. Was the rehearing ordered? A. There has been no rehearing made. The order has stood from that time to the present.

Q. And the decision of Commissioner Williams, then, allowing 14.3 per cent loss, is based upon exactly the same evidence as was before Commissioner Maltbie, on which he found 11 per cent loss, is that true? A. The same evidence is in the case, yes.

Q. And Commissioner Williams had the additional reason, either from evidence presented or argument heard, for increasing the amount of the loss from 11 to 14.3 per cent? A. Mr. Lewis, I would not want to say.

Q. On the record, I mean? A. Mr. Baer, the company's engineer, who was brought on from Chicago, gave considerable evidence on unaccounted gas in the experience of this company, and the cause of it.

Q. Was that before Commissioner Maltbie, during the evidence that was presented, during the time Commissioner Hayward was conducting the hearing? A. I think Commissioner Hayward sat during Mr. Baer's evidence, but it was after.

Q. And do you still understand, then, that the statement that Commissioner Williams had no additional evidence before him on the subject of loss by leakage and use, other than that that was before Commissioner Maltbie at the time that he fixed the rate at 11 per cent? A. He had this testimony of Mr. Baer, which was taken before Mr. Hayward.

Q. That was the only evidence that justified any increase of an allowance for loss? A. There was this evidence. I think the last

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two or three exhibits that were put in before the case came to a stop were some exhibits prepared by the company showing the comparative experience of the company for the first three or four months in 1915 and 1914, in which I think one of the figures showed their then experience of unaccounted for gas and the percentage allowed.

Q. For the first three or four months of the year, limited to that period? A. Yes, to the comparison of the two years, 1914 and 1915.

Examination by Chairman Thompson:

Q. Mr. Baer was called as a witness on behalf of the company or Commission? A. On behalf of the company.

Q. Did the Commission call any witnesses in rebuttal of what Mr. Baer testified? A. Well, Mr. Baer testified not only on this unaccounted for gas, but he also testified on the question of the value of the property and the amount of its depreciation, and its present value. I attempted to cross-examine Mr. Baer.

Q. That was not the question I asked you. A. I am trying to answer it. As to whether or not any evidence was introduced in rebuttal of Mr. Baer.

Q. I did not ask you that question. I asked you if you called any witnesses? A. I understand. I am trying to remember and answer you whether or not the witnesses were called after Mr. Baer had finished or not.

Q. I don't care whether they were called before or after. Were there any witnesses sworn on the Commission that took issue with Mr. Baer? A. Yes, there certainly were.

Q. Who were they? A. Mr. Hine's testimony was constantly at issue with Mr. Baer's testimony.

Q. Who else? A. I don't think anybody else.

Q. Now, Mr. Baer testified to values without having made any inspection of the property, didn't he? A. He said he had made an inspection of the property.

Q. Didn't he swear there he had not made a physical inspection of the property, except to go over it? A. He said he had made a sufficient inspection of the property.

Q. He said he had spent two days going over it and looking at it? A. I showed that on cross-examination myself exactly how little time he put in.

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Q. That was apparently all he had? A. Except some examination which he had made two or three years previous.

Q. And then he swore to the depreciation of 15 per cent? A. The figures are in the testimony.

Q. He could not give a single reason on which to base that particular depreciation? A. I think he did not give a reason, Senator, except what he described as his best judgment.

Q. That is all — he did not base it on anything, condition of the property, or anything else, and could not give any foundation on which to base his so-called judgment that the depreciation was 15 per cent? A. I think that is true, and I think I showed it on his cross-examination.

Q. Still, there was a depreciation allowed, in accordance with his testimony in writing this decision? A. Depreciation was allowed. The depreciation allowed was Mr. Hine's testimony on depreciation. It was very much more than Mr. Baer's.

Examination by Mr. Lewis:

Q. You mean that Mr. Hine's evidence tended to establish a larger depreciation than Mr. Baer? A. It certainly did. A very much larger depreciation. Mr. Baer's was mainly directed to reducing the amount of the depreciation.

Chairman Thompson.— What was Mr. Hine's testimony?

Mr. Semple.— I say Mr. Hine's testimony as to depreciation was that which was followed in the preparation of the draft of the fact which I sent to Commissioner Williams, and Mr. Baer's testimony was mainly directed to reduce the amount of depreciation which Mr. Hine had testified to.

Examination by Mr. Lewis:

Q. To show a smaller depreciation? A. Yes, that would be a higher value.

Q. Give a higher value of the property, of course. At the time this arrangement that you speak of was made between the complainants and the company, was there any discussion on the subject of the then existing oil contract? A. That was during the time the hearing was suspended?

Q. Yes. A. Not to my knowledge. That discussion, Senator, was conducted almost wholly, as far as I understood it, between

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the complainant and the officers of the company, and in a measure with Commissioner Maltbie. I was not present at any of those.

Q. I was wondering whether you knew it as a fact, and whether or not it is a fact that Mr. Ricks stated that by the first of April, 1915, there might be a different oil contract — Mr. Reeves? A. I do not seem to remember that.

Q. You did not know of that ? A. I don't know when he may have made that point. I do not remember it being made, and I was not in at any of those discussions at the time of the suspension of the hearing at all.

Q. Have you any distinct recollection, Mr. Semple, as to whether Mr. Hine's testimony on the subject of the leakage and loss, and so forth, was offered after Mr. Baer's testimony was presented, or before? A. I have not any remembrance about it.

Q. Can you tell us, Mr. Semple, what part of the opinion as rendered by Commissioner Williams was prepared by you? A. I cannot be perfectly sure, Mr. Lewis, but it seems to me that on page 8 of this which you hand me, there is some material which I do not recognize. I would be very glad, if the Commissioner does not mind, to give you a copy of the memorandum which I sent to Mr. Hayward.

Q. I shall be glad to have it. A. Which would show the exact thing. I cannot tell you by running this through page by page what I have written and what I have not.

Q. Will you give us a copy of what you prepared for Mr. Williams? Commissioner Williams testified at page 1542 of the minutes, referring to the tables in the opinion which he prepared: "I think it was in Mr. Semple's memorandum — I will confess that about the only thing that I worked on in the case from my own writing, my own handwriting and my own thought, was the question of going value." Do you know anything about that, Mr. Semple? A. That he worked on?

Q. That about the only part of the opinion which he claims credit for, or assumes responsibility for, is the part in relation to going value? A. I don't know, Mr. Lewis, in reference to that, because, as I said the other day, I have never seen this opinion, and I never knew there was one prepared. He never consulted with me at all as to how it should be prepared. After I had sent my

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memorandum. Before that he indicated to me certain ways he wanted certain things decided. I have a memorandum, "Fair return." Whether that was to be seven or seven and a half I had to know that I could not draw the facts until I did know that.

Q. Did he indicate to you what he regarded as a fair return? A. Seven and a half per cent. Colonel Hayward did not proceed at the end of the case.

(At this point, a recess was taken to give Chairman Thompson an opportunity to answer the telephone.)

A. In addition to fair return, there were the following other points upon which it was necessary for him to give me his opinion and as to which he did give me his opinion, namely, the gas oil contract price and the price and the price to be taken in my draft, going value, the price to be allowed for land, unaccounted-for gas, the price to represent distribution expenses, working capital, and the amount of actual depreciation. After those matters, he indicated to me what his opinion was, and I then prepared a statement of which I now hand you a copy. The pencil marks there are simply as to pages for correction. I think those corrections were in the copy sent to him.

Q. And did Commissioner Williams advise you as to the amount that he proposed to use as to appraised value of the property, exclusive of the land? A. No, sir. I asked him whether we were to allow him, as they insisted we should allow them, a theoretical increase each year in the valuation of the land amounting to about $35,000, since the decision of Mr. Maltbie in 1910, the result of which would have been to add $35,000 each year, for a matter of four or five years to the value of the land. I said to him, and I think I said in the argument — I don't know that I said it to him, but I think I did — that the period was now past, and it was possible to prove the value of that land since 1910 by year, and there was nothing to show that the land had increased $35,000 a year, and it was folly to allow it, and his opinion was that we should take the value as it was indicated in those facts, as it was in the previous opinion.

Q. Did you discuss with him at all the question of preliminary and development expenses, for which an allowance of $260,000 was

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made in the decision of 1910, and the allowance for $260,000 was set up in Commissioner Williams' opinion? A. I do not think I discussed that with him. I think it is $260,000 in that paper that I now hand you.

Q. I wondered if there was any discussion on the propriety of an allowance of that amount for preliminary and development? A. Had been allowed in the previous opinion of Commissioner Maltbie and approved by the court.

Q. Well, was it actually before the court for approval and specifically approved? A. No.

Q. It was simply a part of the report, and was there any argument on the propriety of allowing that amount? A. There was no argument about it. When I say it was approved by the court, I am referring to that clause in Judge Clark's opinion in which he says, "But in all other respects, we think the opinion is right."

Q. And the question of the allowance of the $260,000 and the propriety of that was not discussed specifically or particularly in the Appellate Division? A. No, it was not.

Q. Now, on the subject of working capital, Commissioner Maltbie had allowed $80,000 as working capital for 1910, and was the question of the sufficiency of that sum as a working capital discussed between you and Commissioner Williams? A. Yes. I asked Commissioner Williams what working capital should be put at, and I think he indicated that he remembered that Commissioner Maltbie had said that the working capital should be increased for 1910, after 1910, and the allowance for each year a certain amount. At any rate, his direction to me was to add $10,000 for it, which I did.

Q. Was there any evidence in the case on the subject of the proper allowance for working capital? A. I do not think in the supplementary hearing, after the Court of Appeals decision. I think there was in the previous case, because I remember digesting something on that subject in my brief to the Court of Appeals.

Q. Did you ever discuss with Commissioner Maltbie and Commissioner Williams the propriety of making an allowance, or perhaps I will put it the propriety of reducing and making an allowance on working capital on which a fair return should be allowed? A. I never discussed that. Commissioner Maltbie, in preparing his own opinion, which I did not see, unless I may have seen some

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portions of it, had gone ahead and allowed going value as a part of his idea.

Q. And had he ever advised with you on the subject? A. Not at all.

Q. Had you any opinion as to the propriety in this particular case of allowing an amount as working capital on which a return should be allowed in the rate, in determining the rate? A. Why, I think it should be allowed, and I undertook to, in drawing my brief, supported the contention that the amount of $80,000 allowed in Commissioner Maltbie's opinion was justified by the evidence and was a proper working capital for the company at that time.

Q. Was there a contest over that opinion? A. Yes, sir. There was some contest by the company as to the sufficiency of that $80,000. That was one of the points.

Q. Now, you were aware in 1910, were you not, that the company had accumulated a very considerable surplus and that it was paying dividends upon two million dollars of capital stock, and that there was no evidence in the case, at least, that that stock had ever been paid for by anyone in cash, and that the appraised value of the property was substantially equal to the total amount of cash actually invested, as supported by evidence in the case, you were aware of all those facts, were you not; they were facts, were they not? A. At the time of the 1910 decision?

Q. Yes. A. I think they were, yes.

Q. And you were aware of them, were you not? A. Yes, I was aware of them.

Q. And in view of all those facts, does it now seem to you a proper thing to allow a sum of $80,000 as a working capital upon which the company is entitled to a return of either seven or seven and a half per cent or any per cent? A. I think, Mr. Lewis, on the reproduction theory of ascertaining value, that that is proper to make an allowance of a working capital, and that is the theory under which such an allowance is made.

Q. I understand that is the theory of the law as it stands, and as represented by the decisions of the court upon the statute, as the statute stands. But assume that this committee were engaged in drafting a Public Service Commissions Law, would you in the light of your experience as counsel to the Public Service Commission, favor the inclusion of a provision in the statute under which

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it would be obligatory upon the Commission to allow a working capital and a return upon working capital in all cases? A. I don't know just that I can answer that long question by yes or no. May I state what I think about it?

Q. Yes, your opinion. A. I have very definite ideas about this statute, and about what I think ought to be done to improve it. I am not going to tell them all to you now.

Q. We will be glad to have them any time. A. The history of this question of capitalization and return on capitalization runs back in this State to about 1820. In other words, when that statute in which the New York Central and a lot of other railroad companies said that the State might take over provided they paid it the amount actually expended as capital, with ten per cent. And "capital actually expended" continued in the statute from that time down to the consolidation of the Railroad Law in 1909, and it was carried in the Public Service Commissions Law in 1910, except with reference to railroads. It is there now. It is the capital actually expended upon which return is to be made, and that is what return is to be made on. Now the courts have held in many courts of the United States that it is on the capital, and by an amendment those words were put in for railroads, a substitution for the words we all knew of "capital actually expended." I think economically and legally that "capital actually expended" is the proper phrase to use and all anybody is entitled to have return on for anything he invests in a public service enterprise is for anything he puts into it. Now, coming to your question of working capital, if they put out of pocket in the original institution of the enterprise $50,000 or $80,000 to get the thing upon its feet, for which they use their stock reimbursement or whatever it is — if they put into the treasury at the institution of the enterprise $50,000 to carry the thing along until they are reimbursed out of the earnings, and if they were not reimbursed they are entitled to return.

Q. But having been reimbursed out of the earnings, is it desirable or proper, in your opinion, to carry in a case like this $120,000 of working capital? A. No, it is not, if they have been reimbursed.

Q. Well, Commissioner Williams finds in his opinion that they have been? A. I have not seen it.

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Q. Don't you substantially find that in the opinion that you prepared, that they have been properly reimbursed? A. I do not think so.

Examination by Chairman Thompson:

Q. You have been in this case since the beginning? A. Yes, sir.

Q. How much real money do you suppose these stockholders, all told, ever did put into this concern? A. I think it was shown by the statement of counsel that they did not put in a dollar for stock.

Q. How much real money did the bondholders put in? A. Well, our evidence, I think, shows, with reference to the issuance of bonds, what the investment was. I have not the details before me, but I think Mr. Lewis handed me a sheet the other day, in which the investment, as reported from the facts in the case as made up by Dr. Weber, was about $1,700,000.

Q. And their three million dollars' worth of property is obtained by accretions in value and the pyramiding of profits, wasn't it? A. The increase up to three millions of dollars was due to an increase in the value of the land over what it cost them, and also this million seven hundred thousand dollars, the 1911 investment. We know what they have been turning in since, the bonds that have been issued, and what the money has been used for, because it has been done under the supervision of the Public Service Commission, but the difference between three millions and what we found the value of the property to be, about two millions and a half at that time, and the amount of the investment is chiefly due to an increase in the value of the land, and to certain unit figures, unit costs which were taken by the appraisers in estimating the reproduction cost.

Q. Here you have got some stockholders with stock that did not cost them a cent. You put in $1,700,000, and that is the money that has gone in there. Now this two million and a half, that figure is obtained by allowing the profits to stay there and pyramid, isn't it? A. I am not so sure about that. I cannot speak definitely about that, but it seems to me that the investment which Dr. Weber has made out in his sheet there includes what he could find to have been the money which had been received from bonds or debentures or anything else, and which had gone into the enterprise, and also

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in undistributed profits which remain in the enterprise and which have not been returned to them.

Q. Now, it was not the policy according to the true intent and meaning of this Public Service Commissions Law to permit a company to earn on undistributed profits? A. No, that is true. We should only give them return on property that they used in the service, and that is why working capital should be limited to some sum, and not carried to undistributed profits.

Mr. Lewis.— I will offer in evidence opinion Public Service Commission for the First District, John G. Mayhew and others against the Kings County Lighting Company, rate for gas in the Thirtieth Ward, Brooklyn, case No. 1273, draft for opinion, Alfred C. Semple in pencil.

I want also to offer in evidence the opinion of Commissioner Maltbie in this same case.

(Both received.)

Chairman Thompson.— Well, we will suspend now until to-morrow at 11:30.

DECEMBER 11, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Committee met at 11:30 A. M., pursuant to adjournment, a quorum being present.

The Chairman.— Mr. Banks, you can be excused until Monday morning at 11 o'clock.

The Committee will come to order. Perhaps the Committee ought to apologize for not working every day, but some of our counsel have to go home some time. So last night I excused Senator Lewis and Mr. Shuster until Monday morning, and concluded not to take any testimony to-day.

I want counsel to issue another subpoena for Mr. P. Erskine Wood, returnable Monday morning at 11 o'clock, and we shall suspend until Monday morning, December 13, 1915, at 11 A. M., at this place.

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DECEMBER 13, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order at 11 o'clock A. M., Monday, December 13, 1915, pursuant to adjournment.

Senator Towner in the chair.

Quorum present.

P. ERSKINE WOOD, recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Wood, the payments which you testified to the other day as having been made to you by Mr. Banks in payment for the stock of the Northwestern Construction Company which you turned over to him were the only payments you received on account of your brother, or your transaction with your brother? A. Yes, sir.

Q. And did you subsequently — A. I received the amount of money from Mr. Banks, and the whole debt was liquidated, and I got nothing more. The debt of $3,500 was paid off, and I received nothing more from him.

Q. You got $3,000 of that from Mr. Banks, did you? A. Yes, sir, on those notes.

Q. And the balance, $500, paid to you by your brother? A. I am not quite sure whether $500 exactly he paid me. The account was adjusted, and I am not exactly sure how it worked out.

Q. The debt was extinguished either by the payment from Banks or your brother? A. Yes, sir, and if I received any more I paid it to my mother or brother.

Q. Have you received any checks drawn to your order from your brother since the extinguishment of the loan? A. Yes, sir, but to pay the loan to my uncle, R. R. Colgate, or my brother-in-law, Beekman Winthrop.

Q. That was an indebtedness from your brother to your uncle and brother-in-law? A. Yes, sir.

Q. How much was that indebtedness? A. My recollection is about $10,000; maybe a little more and maybe a little less.

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Q. Do you recall when the payments to your uncle and your brother-in-law began? A. They began immediately, as soon as mine were paid off.

Q. And that was in the early part of 1914? A. Somewheres in there. I don't remember exactly.

Q. Do you recall the amount of the checks that you usually received from your brother? A. Yes, sir, I think as a rule, they were $450.

Q. And how were they drawn? A. Drawn to P. E. Wood.

Q. To your order? A. Yes, sir.

Q. Did you deposit them to your account? A. I — when I received the checks I paid my uncle and my brother-in-law as they directed me.

Q. How did they direct you to pay them? A. I refuse to answer that; that it is neither legal or pertinent; that it is immaterial, beyond the jurisdiction of the Committee; that it is not pertinent to any investigation which this Committee is authorized to make and it relates exclusively and entirely to my personal matters and private business affairs.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

The Witness.— I refuse to answer, for the reasons given.

Q. Did you deposit the checks received from your brother in your own personal account? A. Which checks do you refer to?

Q. The checks drawn by your brother to your order? A. The checks which I paid over?

Q. When your brother drew a check to your order for about $450, did you deposit that check to your own personal account? A. The checks which were paid to me until his debt of $3,500 to me was liquidated, I deposited those to my account in the firm.

Q. And the checks that he subsequently gave to you of about $450 each were they deposited to the credit of your personal account? A. I refuse to answer, on the grounds given.

Mr. Lewis.— I ask the Chairman to direct witness to answer.

Senator Towner.— I direct the witness to answer.

The Witness.— I refuse to answer, on the grounds given.

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Q. Did you personally hand those checks to your brother-in-law? A. I refuse to answer.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.—I so direct.

The Witness.— I refuse to answer, for the reasons given previously.

Q. Did you hand the checks so delivered to you by your brother to your uncle? A. I refuse to answer, for the reasons given.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

The Witness.— I refuse to answer, for the reasons given.

Q. How many of those checks were turned over to you by your brother from the time that his indebtedness to you was liquidated, down to the present time? A. I don't remember, sir.

Q. Have you any record of those checks in your books of account? A. I refuse to answer.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.—I so direct.

The Witness.— I refuse to answer, for the reasons given.

Q. Were those checks deposited by you in any bank, trust company or banking institution in New York City? A. I refuse to answer, for the reasons given.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.—I so direct.

The Witness.— I refuse to answer, for the reasons given.

Q. Have you any knowledge of any indebtedness from your brother, either to your uncle or to your brother-in-law? A. I refuse to answer, for the reasons given.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.—I so direct.

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The Witness.— I refuse to answer, for the reasons given.

Q. Have you any knowledge of the purpose to which moneys which may have been borrowed by your brother from your uncle or from your brother-in-law may have been used? A. I refuse to answer the question.

Mr. Lewis.— I ask that the Chairman direct the witness to answer.

Senator Towner.— I so direct.

The Witness.— I refuse to answer the question, for the reasons given before.

Q. When was the indebtedness of your brother to your brother-in-law and your uncle finally extinguished and paid? A. I refuse to answer.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.— I so direct.

The Witness.— I refuse to answer, for the reasons given.

Q. Have you any knowledge of any loan having been made by your mother, Alice R. Wood, to your brother, Robert C. Wood, since the time of his appointment as a Public Service Commissioner, or within a period of one month prior thereto? A. I have no knowledge of such loans.

Q. Have you any information on the subject? A. No, sir.

Q. Have you known at any time of any payment being made by your brother to your mother? A. I refuse to answer the question.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.— I so direct.

The Witness.— I refuse to answer, for the reasons given.

Q. Have any checks payable to the order of your mother and drawn by your brother, Robert C. Wood, passed through your hands since the liquidation of your brother's indebtedness to you? A. None that I can remember, no, sir.

Q. Do you know your mother's handwriting? A. Yes, sir.

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Q. I show the witness check dated July 19, 1915, drawn to the order of Alice R. Wood, for $450, signed Robert C. Wood and ask the witness if that is the handwriting of his mother? A. Yes, sir, it is.

Q. I show the witness a similar check dated August 3, 1915, for $382.95, and ask if that is the handwriting of your mother? A. Yes, sir, it is.

Q. I show you a check in the same form, dated August 18, $450, and ask you if that endorsement is in your mother's handwriting? A. Yes, sir, that is her handwriting.

Q. I show you a check dated September 7, for $450, and ask you if that endorsement is in the handwriting of your mother? A. Yes, sir.

Q. I show you a check of September 20, 1915, same general form, signed by Robert C. Wood, $450, and ask in whose handwriting the endorsement on the back of that check is? A. My brother's handwriting.

Q. Robert C. Wood? A. Yes, sir.

Q. I show the witness a check dated October 20, 1915, $450, and ask you in whose handwriting the endorsement on the back thereof is? A. My mother's handwriting.

Q. Do you know of the purpose for which these checks were given to your mother? A. I refuse to answer.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.— I so direct.

The Witness.— I refuse to answer, for the reasons given previously.

Q. When did you first know of the fact that your brother was considering the acceptance of an appointment as a Public Service Commissioner? A. Well, I am not quite sure of any special date. I think he spoke to me about it just about as soon as he heard himself. I haven't got any special way of placing that date. It was just general information.

Q. That is sufficiently definite; he did discuss the matter with you, did he? A. There wasn't any discussion. He just told me.

Q. That he had been offered the place? A. No, sir.

Q. What did he say? A. I don't remember.

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Q. Have you any recollection on the subject of what was said at that time? A. No, sir.

Q. Do you recall any statement that he made to you at that time? A. No, sir.

Q. Did he give you any information as to when the appointment had been offered to him? A. No, sir.

Q. Did he state to you by whom the appointment had been offered to him? A. No, sir.

Q. Did he mention the name of any individual as having suggested to him that he might be appointed Public Service Commissioner? A. Not that I remember.

Q. Or that he was likely to be? A. Not that I remember.

Q. Did he discuss with you the propriety of his accepting the position? A. No, sir.

Q. Did he say to you in words or in substance that the acceptance of the position would entitle him to a very handsome salary? A. I knew what the salary was, $15,000 a year.

Q. Was the amount of the salary discussed between you and your brother? A. Not that I remember. I knew what it was prior.

Q. Was he at that time indebted to you in any amount whatever, at the time of the discussion? A. Yes, sir, he was. That $3,500, as I remember, had not been paid off.

Q. When was that $3,500 indebtedness created? A. It was perhaps two or three months previous to that time.

Q. Will you tell us the purpose for which that indebtedness was created? A. I refuse to answer, for the reasons given.

Mr. Lewis.—I ask the Chairman to direct the witness to answer.

Senator Towner.— I so direct.

The Witness.— I refuse to answer, for the reasons previously given.

Q. At the time you discussed with your brother, or that he advised you of the fact that he had been offered the position, was he indebted to your brother-in-law and your uncle in any amount whatever, to your knowledge? A. I refuse to answer the question.

Q. Have you any knowledge of the fact as to whether or not he was indebted? A. I refuse to answer.

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Mr. Lewis.— I ask the Chairman to direct the witness to answer both questions.

Senator Towner.— I so direct.

The Witness.— I refuse to answer the questions, for the reasons given.

Q. At the time of the conversation between you and your brother at which he informed you that he had been offered the position of Public Service Commissioner or was contemplating the acceptance of that appointment, was your brother indebted to his mother in any amount whatever, to your knowledge? A. To my knowledge, no.

Q. And any indebtedness of your brother to your mother that now exists has been created since the time of the statement made by him to you that he was about to be appointed a Public Service Commissioner? A. No, I shouldn't say that was true.

Q. Do you know of any indebtedness that existed prior to his discussion with you? A. I did not know of it then, but I have since understood that my mother had made him a loan, but at that time, I did not know anything about it.

Q. Have you since learned as to the time, as to the date when that loan was made? A. No, sir, I have not learned, and I don't know.

Q. Have you knowledge now of the fact that the loan existed at the time that the discussion between you and your brother took place? A. The first I knew of that loan was when I read it in the papers the other day, since I testified here.

Q. And do you now know whether or not at the time your brother and you were talking on the subject of his appointment he owed your mother any money at that time? A. Yes, sir, he must have, surely.

Q. Do you know that he did? A. Well, I know now that he must have. I did not know it until the other day.

Q. Do you know now the purpose for which that loan was made? A. I refuse to answer that question.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

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Senator Towner.— I so direct.

The Witness.— I refuse to answer, for reasons given.

Q. Do you know the amount of the indebtedness of your brother, Robert C. Wood, to your mother? A. No, sir.

Q. Have you ever known it? A. No, sir.

Q. Do you know how much it was originally? A. No, sir.

Q. Do you know how much may have been paid of that indebtedness to apply thereon? A. No, sir.

Q. Do you know of any payment having been made to your mother? A. I suppose those payments were.

Q. Do you know of any others? A. No, sir.

Q. Recently have you talked with your brother, Robert C. Wood? A. I saw him this morning.

Q. Did you discuss with him this morning the testimony that you were about to give on the stand to-day? A. I discussed the situation in a general way.

Q. At the time you were talking with him did you expect to be a witness to-day? A. I didn't know whether I would be or not.

Q. Did you know an effort had been made to obtain your presence here to-day? A. I saw it in the papers this morning.

Q. Did you intend when you talked with your brother to come here and submit yourself as a witness? A. If I was called, certainly.

Q. Was there anything said to your brother on the subject of your coming here to-day to testify? A. Nothing specifically.

Q. Did you tell him you were coming here, if the Committee desired you as a witness, you would be here? A. No, sir. I told him from what I saw in the papers this morning, I expected to be called.

Q. Did you discuss with him this morning the loan testified to as having been made to your brother by your uncle and your brother-in-law? A. I discussed the situation in a general way, and I don't remember what specifically was said.

Q. Did you discuss the loan by your uncle and your brother-in-law? A. I don't think that came up.

Q. You don't think that was discussed at all? A. No, sir.

Q. Did you discuss with your brother this morning the loan that was made by your mother to Robert C. Wood? A. The loan was — we did mention that.

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Q. What was said on the subject? A. I told him I didn't know about it until I saw it in the papers the other day.

Q. What did he say? A. He didn't have anything to say on the subject.

Q. Did he tell you the purpose for which it was made? A. He did not.

Q. You do know the purpose, do you? A. The purpose for which it was made?

Q. Yes. A. No, sir, I don't.

Q. Have you any knowledge whatever as to the purpose for which the loan was made by your mother to your brother, Robert C.? A. No, sir, I haven't.

Q. What else was said this morning in conversation with your brother? A. I don't remember anything. I only saw him about a minute.

Q. Where did you see him? A. In Mr. Stanchfield's office.

Q. Were you there by appointment with him? A. No, sir.

Q. Had you communicated with him before this morning since you were last on the witness stand? A. I saw him the other day at my house, and several times, and had dinner with him.

Q. Since you were last on the witness stand? A. Yes, sir.

Q. In any of those conversations have you discussed the loan from your uncle and your brother-in-law to him? A. Discussed the loan?

Q. Yes, the loan or the purpose of the loan, or has it been talked of? A. I don't remember that it has come up in the discussion.

Q. Do you swear that the matter has not been talked about between you and your brother since you were last on the witness stand? A. The loan of my uncle and brother-in-law?

Q. Yes. A. I won't swear to it, but I don't recollect it.

Q. Did you discuss with him since you were last on the witness stand the loan made by your mother to him? A. This morning was all, as I told you.

Q. Have you talked with your mother on the subject of the loan which she made to your brother, Robert C. Wood? A. I refuse to answer the question, regarding my mother.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

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The Witness.— I refuse to answer the questions, for reasons given.

Q. What if anything has your mother said to you upon the subject of the loan made by her to your brother, Robert C. Wood? A. I refuse to answer the question, for the reasons given.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

The Witness.— I refuse to answer, for the reasons given.

Q. When did any conversation take place between you and your mother on the subject of the loan made by your mother to Robert C. Wood? A. I refuse to answer.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

The Witness.— I refuse to answer the questions, for the reason given.

Q. Did your mother in any conversation which you may have had with her since your last appearance upon the witness stand in this investigation, tell you the amount of any loans which she had made to your brother, either since his appointment as a Public Service Commissioner, or within a period of one month prior to his appointment? A. I refuse to answer.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

Mr. Wood.— I refuse to answer the question, for the reasons given.

Q. Has your mother stated to you in any conversation which you have had with her since you were last upon the witness stand, the amount of any payments made by your brother, Robert C. Wood, to her, to apply upon any loan which she may have made to

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your brother, Robert C. Wood, since the date of his appointment as a Public Service Commissioner, or within a period of one month prior thereto? A. I refuse to answer the question.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

Mr. Wood.— I refuse to answer the question, for reasons given.

Q. When did you last see your brother-in-law, Beekman Winthrop — is he your brother-in-law? A. Yes, sir.

Q. When did you last see him? A. I came in with him on the train this morning, and spent Sunday with him.

Q. Did you discuss the matter of the loan made by him and your uncle to Robert C. Wood? A. I refuse to answer the question.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

Mr. Wood.— I refuse to answer the question, for the reasons given.

Q. Was the subject of a loan made by your brother-in-law and your uncle to Robert C. Wood, discussed by you with Beekman Winthrop this morning on your way into town? A. I refuse to answer the question, for the reasons given.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

Mr. Wood.— I refuse to answer, for the reasons given.

Q. Were you at the house of your brother-in-law, yesterday or last evening? A. Yes, sir.

Q. Did you spend the night there? A. Yes, sir.

Q. Was the subject of this loan discussed between you and your brother-in-law either upon the train or at the house during your visit there? A. I refuse to answer the question.

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Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

The Witness.— I refuse to answer, for the reasons given.

Q. When did you last see your uncle? A. I saw my uncle last week, and I think he went back to his place at Sharon, Connecticut, Saturday morning, and I think I saw him Friday night.

Q. What is his name? A. Romulus Riggs Colgate.

Q. And his home is at South Norwalk? A. No, sir, Sharon, Connecticut.

Q. Did you discuss with him while he was in the city the loan of moneys made by him and your brother-in-law to Robert C. Wood? A. I refuse to answer the question for reasons given.

Mr. Lewis.— I ask the Chairman to direct the witness to answer.

Senator Towner.— I do so direct.

The Witness.— I refuse to answer the question, for reasons given.

Q. When did you last see your mother? A. I saw her Saturday afternoon.

Q. Saturday? A. Saturday afternoon.

Q. Was she ill? A. Yes, sir; she is very much broken up, and she is excessively nervous.

Q. Is she able to sit up, or confined to her bed? A. She sat up a while on Saturday.

Q. Is she unwilling to appear and testify before the Committee? A. I don't think she is physically able to.

Q. Would it inconvenience her to have the Committee and the stenographer call at the house and take her testimony? A. I should like to discuss that with her doctor before I make any assertion one way or the other.

Q. Will you undertake to discuss it with her physician and ascertain what his advice is upon the subject? A. Yes, sir, I will.

Q. I feel that I ought to say to you, Mr. Wood, that the reluctance of your brother and of yourself to disclose to this Committee the circumstances of the loans made by your mother to your

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brother, and your brother-in-law and uncle to your brother, Robert C. Wood, all of which, according to the testimony of your brother, were made subsequently to the offer of the appointment of Public Service Commissioner, has operated on the minds of this Committee and its counsel — A. You say the loan was made to me?

Q. No, sir; your brother; not your loan. A. Excuse me, I didn't understand you.

Q. — in such a way as to seem to require an explanation of all the circumstances connected with the making of such loans, and the purposes for which the loans were made, and the disposition of the money so loaned to your brother, Robert C. Wood, if the circumstances, after full consideration, seem to require it, the Committee will endeavor to obtain the testimony of your mother upon this subject, and also of your brother-in-law, Beekman Winthrop, and a request will be made upon your uncle to submit himself to the jurisdiction of the Committee, for the purpose of enabling the Committee to ascertain from him all the facts and circumstances in connection with such loan; I feel that I ought also to say to you, Mr. Wood, that in limiting the investigation as I have to the period beginning at a time about thirty days or about one month prior to your brother's appointment, I have, beyond any question, brought about a record upon which I feel sure that the Court will direct you to answer, or punish you for contempt, should you persist in your refusal to do so, and that the importance of the subject is such that the Committee has no alternative except to make an application to the Court. I think I will excuse you now until 2 o'clock, and I desire that you return at that time, so that in the meantime if you should be advised that these questions are pertinent and within the jurisdiction of the Committee, and within the power of the Committee, you may testify at that time. I may also have some other questions to ask you. A. Very well.

Mr. Lewis.— Mr. Bordwell, did you have a subpoena for Mr. Beekman Winthrop?

Mr. Bordwell.— I did, and he is here. He is in with Senator Thompson.

Mr. Lewis.— Ask him to step here.

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BEEKMAN WINTHROP, being first duly sworn, testified as follows:

By Mr. Lewis:

Q. Mr. Winthrop, what is your business? A. I am a banker and dealer in investment securities, 40 Wall street.

Q. Are you related to Robert Colgate Wood? A. I am.

Q. In what way? A. Brother-in-law.

Q. Has he borrowed any money from you since a date one month prior to his appointment as a Public Service Commissioner? A. What date was that, Mr. Lewis?

Q. I think it was in May, 1914. A. I don't think so, no, sir.

Q. Had he borrowed any money prior to that time from you? A. Yes, sir, he did.

Q. What time? A. It was either in the latter part of the year 1913, or the first part of the year 1914.

Q. And what amount did he borrow? A. He borrowed a sum of money which — he borrowed a sum, and then I guaranteed payment of a certain amount, if it became necessary. The two sums, as I remember it — I guaranteed in conjunction with Mr. R. R. Colgate, his uncle, and the two sums, as I recollect, amount actually paid out, and the amount guaranteed, was between, I think, ten and fifteen thousand dollars.

Q. Is that as accurately as you can state the amount? A. That is as accurately, I think, as I can state the amount.

Chairman Thompson presiding.

Q. How were those loans represented, notes given? A. No, sir; I simply paid out a sum of money and then guaranteed the payment of the additional sum if it should become necessary, to pay debts owed by Mr. Wood, provided the matter was handled by his brother, Mr. P. Erskine Wood.

Q. What was the amount advanced in cash? A. Originally it was fifteen hundred dollars, which represented the share of Mr. R. R. Colgate and myself. What I mean by that, part of that was paid back by Mr. R. R. Colgate subsequently to me.

Q. And you advanced fifteen hundred dollars, a part of which was returned to you by Robert C. Wood, and a part of which was returned by R. R. Colgate? A. Yes, sir.

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Q. And the balance of the sum due was between ten and fifteen thousand dollars, the payment guaranteed by you? A. Yes, sir; and Mr. R. R. Colgate.

Q. To whom? A. It was to Erskine Wood. It was to Robert Wood, through Erskine Wood. In other words, the whole matter was between Mr. R. R. Colgate, and Erskine Wood, and Robert C. Wood.

Q. And your guarantee was to Erskine Wood, was it? A. Well, I suppose to Robert Wood also, and Erskine Wood was to handle the matter, and he was to call upon me for any amount needed to make up the deficit to pay Robert Colgate Wood's debts.

Q. And the arrangement was that P. Erskine Wood should advance such an amount as might be required, the payment of which you — A. I don't know about that. All I know I told Mr. Colgate and Mr. Wood that they could call upon me any time they needed it, for a sum of money up to approximately a certain amount.

Chairman Thompson.— You say Mr. Wood; who do you mean, Erskine or Robert?

Mr. Winthrop.—I told them both, that Erskine could call upon me, and he was handling the matter for Robert Wood.

Q. Do you know what that money was used for? A. No, sir. I understand to pay some debts incurred by Robert Colgate Wood in the transaction of his business.

Q. Has the amount that you loaned in cash been repaid to you? A. It has.

Q. And has the liability which you assumed as the guarantor been extinguished? A. It has.

Q. And how was that accomplished? A. From time to time during the period which it was alive, Erskine Wood would come and tell me that such and such a sum had been paid in either by Robert Colgate Wood or upon some notes which he had taken for the sale of a construction company.

Q. Were you interested in the sale of the construction company? A. No, sir, except that it was sold for my — I was getting it to pay my debts. I had no financial interest otherwise than that.

Q. Did you take any promissory note or due bill, or anything in writing, to evidence your loan? A. I did not.

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Q. And was your guarantee a written guarantee? A. No, sir.

Q. It was a mere verbal assurance? A. A mere verbal assurance.

Q. And are you able either from memory or from any memoranda which you may have at your office, to fix more definitely the date of the loan which you made, or the guarantee which you gave? A. I may have a check with which the money was advanced. That is the only document I have.

Q. Cancelled check? A. Yes, sir.

Q. That would be a check to P. Erskine Wood; if any, would it? A. I believe it would be a check to Mr. Ledyard, Lewis Cass Ledyard.

Q. Will you be good enough to look at your cancelled checks and see if you can find such a check? A. Yes, sir.

Chairman Thompson.—What bank was it drawn on?

Mr. Winthrop.— I could not state that offhand, but I would say probably on the Manhattan Company.

Chairman Thompson.—Manhattan Trust Company?

Mr. Winthrop.— No, sir, Manhattan Company, located 40 Wall street.

Q. Do you know of any loan having been made by Mrs. Wood, Mr. Wood's mother? A. I do not.

Q. Have you any information on that subject at all? A. No, sir, I have not.

Q. Has the liability of the uncle, Mr. Colgate, been extinguished, do you know? A. That is a question you ought to ask him.

Q. Have you any knowledge of the subject? A. I do not object to answering that. As far as I know, it was, because I think we were co-guarantors. I haven't any real knowledge on the subject.

Q. You appreciate the uncle is not within the jurisdiction of this Committee? A. I did not know that.

Q. He is a resident of Connecticut, is he not? A. Yes, sir, but he is here in New York. He has an office here.

Q. What number? A. Somewheres on Broadway, but where I don't know.

Q. Somewhere on Broadway? A. Yes, sir.

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Q. I was under the impression that he was not engaged in business here? A. I do not think it is business. I think he has an office for the transaction of his own personal business.

Q. You think the directory will show the number of his office in New York city? A. I imagine so. It is somewhere further downtown than here.

Q. You said something about the payment of money from the transfer of the Northwestern Construction Company; had you any interest in such payment? A. Only insofar as those payments would tend to extinguish my guarantee, the income would tend to extinguish my guarantee.

By Chairman Thompson:

Q. When was this $1,500 check paid back to you? A. I think it was last spring or winter.

Q. Well, have you got anything to show for that? A. No, sir, I have not.

Q. Was it paid in money or check? A. I believe paid in check. It was not paid in money.

Q. Was it all paid at one time? A. I think it was paid in two installments.

Q. Seven hundred and fifty dollars each time? A. No, sir, you see it was only, mine was only $750, my share, and I advanced $1,500, and Mr. R. R. Colgate paid me $750.

Q. When did he pay you that? A. Not long after the money had been advanced.

Q. And the rest was paid by Robert C. Wood? A. I don't think so.

Q. Who? A. I think it was paid by Erskine Wood.

Q. When? A. I said I think it was about last spring or last winter, a year ago.

Q. All at one time? A. I think two different installments.

Q. Half of it each time? A. I really don't know. I think it was — my impression is, $500 at one time and $250 at another.

Q. Have you got something upon your books from which we can tell when those checks were paid? A. I presume so. I don't know.

Q. It was P. Erskine Wood's check? A. I think so, but I can't remember. I think it was his check.

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Q. The only liability you ever undertook was $750, the only legal liability? A. I had a moral liability, and I presume it was legal also. I think it was legal also.

Q. The only liability you ever assumed, except what you gave your word for, was $750? A. Yes, sir, that was the only cash. My word was as good as the money.

Q. You realize an agreement to guarantee that is not in writing is not valid, don't you? A. No, sir, I don't.

Q. You were never called upon — whatever that was, you say it was extinguished. A. Yes, sir.

Q. How? A. I was informed that the guarantee would not be called upon.

Q. Who informed you of that? A. Erskine Wood.

Q. In writing or by word? A. By word.

Q. When? A. Well, it was, as I remember, it must have been last winter or spring.

Q. It was before the cash was returned? A. If I am not very much mistaken the cash was returned the last of the transaction.

Q. You do not know anything more about any other moneys that Mr. Wood borrowed or got from any source? A. No, sir.

Q. You did not give a guarantee to anybody except P. Erskine Wood and Robert C. Wood, the way you have detailed it? A. And R. R. Colgate.

Q. Not to any institution or outside person that was to lend any money? A. Absolutely not.

Q. And you did not give a guarantee to a bank or loaner or anybody else; you simply said they could call upon you for more if they wanted it? A. Yes, sir.

Q. And they only called on you for $750? A. They never called on me for any additional money.

Q. How did Mr. Ledyard come into the matter? A. It was at the time they were winding up the Northwestern Construction Company.

Q. He was the attorney for the Northwestern Construction Company? A. I don't know whose attorney he was. He was handling the matter.

Q. And that was the time you undertook this liability? A. It was about that time, yes, sir.

Q. That is the way Mr. Ledyard got into it? A. The cash was advanced at that time.

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Q. And that is where your liability was assumed? A. The cash liability.

Q. I mean your further liability to be called upon further? A. No, sir; that was general. It wasn't one transaction. It was throughout some period of time. I don't remember whether the actual guarantee was made at the time the money was paid over or not.

Q. Well, it would be either at that time or later, wouldn't it? A. No, it might have been earlier.

Q. How much earlier? A. It is difficult for me to fix exact dates. As I said before, the transactions occurred somewhere between the fall of 1913 and during the winter of 1914.

Q. You are sure it was at the time they wound up the Northwestern Construction affairs? A. About that time. I won't say that day.

Q. And that was the reason for it? A. No, sir, general debts.

Q. It was the winding up of these affairs that called the matter to a head where you had to advance the money for that or something else? A. It was for that, I think — now, if I am not mistaken, I think the guarantee occurred before. The Northwestern Construction Company was being wound up after that. The winding up of the Northwestern Construction Company was to go to extinguish the guarantee.

Q. Well, of course the money from the Northwestern Construction Company was not obtained until after the proceedings were taken to wind it up? A. No, sir.

Q. And naturally you would not get the money until after? A. No, sir, but I think the proceeds were intended to turn over to us, the guarantors, the money they got out of that, to extinguish the guarantee.

Q. Did you see Mr. Wood lately, Robert C. Wood? A. Yes.

Q. When? A. I don't know, a week or ten days.

Q. Did you talk with him about this matter? A. No, sir.

Q. Is he related to you? A. He is a brother-in-law.

Q. Can you state more definitely the exact time you saw Mr. Robert C. Wood last? A. I think it was the latter part of last week. I think it was Thursday or Friday. It was Friday of last week.

Q. What was the conversation? A. I went to Mr. Stanchfield's office and saw Robert Wood there.

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Q. Who else? A. Mr. Stanchfield was there.

Q. Did you talk over at that time what you were going to testify to here? A. I mentioned to Mr. Stanchfield what I knew.

Q. Did you tell it just as you have here? A. Just exactly, except I told my story, and he did not ask questions.

Q. Was Erskine Wood there at the same time? A. Yes, sir.

Q. Did you and Erskine Wood discuss this transaction about the check? A. About the giving of the check?

Q. Yes. A. I don't think so.

Chairman Thompson.— That is all. We will take an elastic recess. We probably will not convene again until quarter after 2, unless something unforeseen occurs.

(Whereupon a recess was taken as stated.)

AFTERNOON SESSION

Senator Lawson presiding.

Senator Lawson.— The Committee will please come to order.

P. ERSKINE WOOD, recalled for further examination, testified as follows:

By Mr. Lewis:

Mr. Wood.— I would like to make a correction, and that is, I would like to state that I know of no loans that were made to my brother either during his term as Commissioner or during that month previous to his being appointed Commissioner. That was the period you said this morning. My loan was made somewheres, as I remember it, in January or February, somewheres in there, January, 1914, or the latter part of December, 1913, and the loan made by my uncle and brother-in-law was approximately the same time, as I remember it, as mine, and the loan which my mother made, which I am not familiar with, I understand was made before that, and all the loans were made at times when I myself had no idea of his appointment or even chance of his appointment as a Public Service Commissioner.

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Q. Do you still refuse to answer the questions which I asked you this morning? A. Yes, sir.

Senator Lawson.— Counsel, ask the witness on what grounds he refuses to answer.

Mr. Lewis.— He stated the grounds this morning.

Senator Lawson.— The grounds are the same?

Mr. Wood.— Yes, sir.

Senator Lawson.— Ask the question that he refused to answer.

By Mr. Lewis:

Q. Do you still refuse to answer the questions that I asked you this morning, and which you refused at that time to answer? A. Yes, sir, I do, and on the same grounds.

Q. How much did Mr. Beekman Winthrop advance in cash on account of the loan to Mr. Robert C. Wood? A. I refuse to answer the question, on the ground I stated this morning.

Q. Did you hear his testimony on that subject when he was on the stand after you left the stand this morning? A. No, sir, I didn't know he was on the stand.

Mr. Lewis.— I ask the Chairman to direct the witness to answer the question.

Senator Lawson.— What is the question? (The stenographer repeats the question, as follows: "How much did Mr. Beekman Winthrop advance in cash on account of the loan to Mr. Robert C. Wood?")

Mr. Wood.— I refuse to answer the question, on the same ground.

Mr. Lewis.— I ask the Chair to direct the witness to answer the question.

Senator Lawson.— I direct you to answer that question.

Mr. Wood.— I refuse to answer the question on the grounds stated this morning.

Senator Lawson.— On the ground your answer would tend to incriminate you?

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Mr. Wood.— No, sir.

Senator Lawson.— State the grounds.

Mr. Wood.— That it is neither legal or pertinent; that it is immaterial and beyond the jurisdiction of the Committee; that it is not pertinent to any investigation which this Committee is authorized to make, and it relates exclusively and entirely to my personal matters and private business affairs.

Senator Lawson.— You are reading from a paper prepared by counsel?

Mr. Wood.— Yes, sir.

Senator Lawson.— Who is your counsel?

Mr. Wood.— Mr. Stanchfield and Mr. Park.

Q. How much did your brother-in-law, Mr. Winthrop, guarantee in the way of liability for moneys advanced for the use and benefit of Robert C. Wood? A. I refuse to answer.

Mr. Lewis.— I ask the Chair to direct the witness to answer.

Senator Lawson.— I direct you to answer the question.

Mr. Wood.— I refuse to answer the question on the same ground.

Senator Lawson.— Do you understand it is entirely within the jurisdiction and purview of this Committee of the Legislature to demand that you answer these questions pertaining to your brother who is a Public Service Commissioner, and further that this Committee can and will take action to punish you for contempt unless you are willing to and do answer them?

Mr. Wood.— Yes, sir; I understand that. I have been advised by my counsel what is within my rights.

Q. You have refreshed your recollection on this subject since this morning's testimony, as to the times the loans were made, have you? A. I did not realize the time, until thinking it over. I realized that you said subsequently to that month previous to his being appointed as Public Service Commissioner, and then I thought of that.

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Q. Have you consulted any records or documents or data which has operated to refresh your recollection? A. No, sir.

Q. Have you any records, documents, books of account, checks, stubs of checks, or other documentary evidence relating to this matter? A. Of what?

Q. Loans to your brother? A. Of my loans?

Q. Of your loan and the loan of your uncle and your brother-in-law or your mother; any of those loans? A. My own loans to him, as I told you, are with my account with the firm.

Q. How was that loan paid to him; you lend him thirty-five hundred dollars in cash or by check? A. By check.

Q. At the time you made that loan, did anybody else loan him any money, or was there any money advanced by anybody else for his benefit through you? A. No, sir; not that I remember.

Q. That transaction was the transaction by which you acquired the control of the stock of the Northwestern Construction Company? A. No, sir. That was not exactly the case. I made him this loan long before I had any idea of taking over the Northwestern Construction Company.

Senator Lawson.— How long before, if you remember?

Mr. Wood.— Well, I think I made him the loan about either the latter part of December or first part of January, and I think the question of taking over the Northwestern Construction Company came perhaps a month or so later. I don't remember exactly when that did come up. I think it was probably a month or so.

Senator Lawson.— The taking over of the Northwestern came, you say, about a month after the matter of the loan, your making the loan?

Mr. Wood.— Yes, sir; approximately a month.

Q. Have you any recollection of when that was taken over? A. Yes, sir, about a month after, I should say somewheres around the first of February.

Q. Wasn't that taken over by you because of your brother's prospective appointment as Public Service Commissioner? A. I agreed to wind it up then.

Q. Didn't you take it over at the time you agreed to wind it up? A. No, sir.

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Q. Took it over and agreed to wind it up at the time he was planning to go on the Public Service Commission? A. Yes, sir; just previous to that, but I agreed to wind it up and pay the money, and just a little while before he was appointed Public Service Commissioner, I agreed to take it off his hands.

Q. Wasn't it agreed he should compensate you the money you and your brother-in-law and uncle had coming from him out of his salary as Public Service Commissioner? A. Originally?

Q. No, from the time he turned the property over to you? A. No, sir; nothing said about salary. He was going to pay me as soon as he could.

Q. Did he have any means of payment at that time other than his salary as a prospective Public Service Commissioner? A. I don't think he had, to my knowledge, no.

Q. Wasn't it talked at the time he was to turn over a certain proportion of his salary to you for the payment of that obligation? A. It was not any certain proportion. He was to turn over as much as he could.

Q. Of his salary? A. Yes, sir.

By Senator Lawson:

Q. You made the loan of thirty-five hundred dollars about a month previous to your brother being appointed a Public Service Commissioner? A. No, sir.

Q. Or a month before you got together with him and agreed to take over the company, is that right? A. I made him the loan, I should say, in the latter part of December, or first of January.

Q. In what year? A. Either December, 1913, or the early part of January, 1914.

Q. January, 1914; now, then, when did you agree to take over the company? A. I agreed to actually take over the company and wind it up for him just a short while previous to his being appointed as Public Service Commissioner, or being sworn in as Public Service Commissioner.

Q. That is considerably over a month from the time you loaned the money, and you agreed to take it over? A. Yes, sir. He was going to wind it up for me, and give it to me, but I went in personally at a directors' meeting and relieved him of that.

Q. And that was considerably over a month between the time

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you actually loaned money and took over the company? A. Yes, sir.

Q. What did you mean when you said it was a month after you had loaned him the money you agreed to take it over and wind it up? A. In the first place I loaned him the money, and there was nothing said at that time how he was going to repay me, and he decided — I don't know how it came about, and he decided he was going to get off the Northwestern Construction Company, and after that I agreed I would do the physical winding up of the thing, and went in as president.

Q. Didn't he say anything to you at the time you loaned him this money as to how he proposed to pay it back to you? A. Not at that time, no, sir.

Q. And you didn't ask him, of course? A. No, sir.

Q. Counsel asked you how you expected him to pay you back that money out of any prospective earnings he might have, or whether out of his salary as a Public Service Commissioner; what answer can you give to that? A. He told me at the time I made the loan, he would pay it back the best he could. I didn't know how he expected to pay it back. I loaned that to him.

Senator Lawson.— That is all, Counsel.

By Mr. Lewis:

Q. Have you that check available? A. I don't know whether it is or not.

Q. Will you look and see if you can find it and produce it? A. Yes, sir.

Mr. Lewis.— I have nothing further.

Senator Lawson.— We will take an elastic recess.

AFTER RECESS

Chairman Thompson presiding.

Chairman Thompson.— The Committee have to-day been more interested in the attempts of the Committee to serve process. We were advised that Mr. Sidney G. Johnson, the former vice-president of the Union Switch and Signal Company, which is located

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at Swissvale, Pennsylvania, and who is now an officer of the General Railway Signal Company, located at Rochester, would be at his office this morning. We were advised by people who were in position to know his whereabouts, and his engagements, and we expected Mr. Johnson to-day to be at his office, and we spent the day finding that he has not been at his office, and the people at his office are very dry of information in regard to him, and we have been unable to get the subpoena served upon him. We have turned our attention to the Union Switch and Signal Company, and being unable to get any information at that office, we have subpoenaed the chief clerk, and after getting him here, he has told us the names of the directors and officers of that company in full, and Mr. William D. Uptegraff, of Pittsburgh, is president, and T. W. Sieman, of Edgewood Park, Pittsburgh, vice-president and treasurer, and Mr. T. S. Grubbs, of Pittsburgh, is the secretary and assistant treasurer. The board of directors consists of residents of Pittsburgh and Chicago, with the exception of Mr. Herman H. Westinghouse of New York. We sent a subpoena to Mr. Herman H. Westinghouse, and they did not know where he was, and nobody could find out where he was. We subpoenaed the office boy, and then Mr. Westinghouse appeared, and I think perhaps now we will get in touch some way or other with Mr. Uptegraff. Mr. Westinghouse has been excused until 11 o'clock to-morrow. In relation to the other signal company, we have subpoenaed one of the officers. In that case we could not find out anything until we subpoenaed the office boy, and he was only fourteen years old, and that produced the president in about ten minutes. That is in the case of the Federal Company. Mr. Johnson is now in the employ of the General Railway Signal Company, the Rochester concern. The president and one of the directors, Mr. Salmon and Mr. Finucane, one of the directors, has been subpoenaed to appear here to-morrow morning at 11 o'clock. So that, having spent a full day learning the devious ways by which subpoenas can be tried to be served in the city of New York, we will now suspend, if there is nothing else, until to-morrow morning at 11 o'clock.

Whereupon, at 5:20 o'clock P. M., an adjournment was duly taken to Tuesday, December 14, 1915, at 11 o'clock A. M., at the same place.

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DECEMBER 14, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order, pursuant to adjournment, at 11 o'clock A. M., Chairman Thompson presiding.

Quorum present.

There being no witnesses present, an elastic recess was taken.

The Committee was called to order at 3:30 o'clock P. M., Chairman Thompson presiding.

Chairman Thompson.— The Committee will come to order.

I last night sent a telegram to Mr. Sidney G. Johnson of Rahway, New Jersey, as follows:

"Please appear before Legislative Committee Tuesday morning, 11 o'clock, City Investing Building, New York, and save us more unnecessary delay to locate you. We want your testimony as to signal contracts made with Public Service Commission, and any further postponement can only prove embarrassing to yourself, your employers and all concerned. Will you telephone me Biltmore Hotel to-night as to your willingness to appear to-morrow? George F. Thompson, Chairman."

I received in reply to that, the following: "George F. Thompson, care of Biltmore, New York. Your message date yesterday Sidney J. Johnson delivered by phone to the addressee personally at nine-twenty this A. M. (Signed) Manager.", and about five minutes ago I received this: "Rahway, N. J., two-thirty P. M., December 14, 1915. Mr. George F. Thompson, Chairman Legislative Committee, City Investing Building, 165 Broadway, New York, N. Y. Your telegram delivered this morning. I will appear either Thursday or Friday of this week which trust will be satisfactory. Sidney G. Johnson."

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I direct this telegram to be sent in reply: "Sidney G. Johnson, Rahway, N. J. Telegram received. Will expect you to appear before Legislative Committee Thursday morning, December 16, 1915, at City Investing Building, New York City, at 11 o'clock A. M. George F. Thompson, Chairman."

Mr. H. H. Westinghouse is excused from appearance before this Committee until Thursday at 2 o'clock.

WILMER W. SALMON, being first duly sworn, testified as follows:

By Mr. Lewis:

Q. Mr. Salmon, your home is at Rochester, New York? A. Yes, sir.

Q. And you are connected with the General Railway Signal Company? A. Yes.

Q. As its president? A. Yes, sir.

Q. And have been since what date? A. Well, since its organization in 1904, I think.

Q. General offices of the company located at Rochester? A. Yes, sir.

Q. The books of the company, are they at Rochester? A. Yes, sir.

Q. Any books of the company kept in New York? A. No books of account, except petty cash accounts, I imagine they keep here.

Q. Is Mr. Sidney G. Johnson an employee or officer of the company? A. An officer.

Q. What is his position? A. Vice-president and in charge of sales.

Q. Where are his headquarters? A. Nominally in Rochester; actually in New York, 30 Church street.

Q. When did he enter the employ of the company? A. I think it was in August of 1914, my best recollection of it, or perhaps September.

Q. How long had you known him? A. I think for twenty years, roughly.

Q. And during that period where had he been employed? A. I think first — this I am not sure of, but I think he was with

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Johnson Switch and Signal Company of Rahway, first, and for, I should say, roughly, twelve or fifteen years, with the Union Switch and Signal Company of Swissvale, Pennsylvania.

Q. Was that formerly known as the Westinghouse Company; has it been commonly known as that? A. It has been called one of the Westinghouse companies, but it has been known popularly as the Union Company, and in the trade so spoken of.

Q. When did he leave the employ of that company? A. Just immediately prior to his coming with us.

Q. Did you know of the fact he was about to leave the company when you made an appointment with him? A. No, sir.

Q. As a matter of fact, he left the company and immediately called upon you and you employed him, is that so? A. Exactly.

Q. And that was in August, 1914? A. I think August or September. I am not absolutely certain of the date; about that time.

Q. And he has been in the employ of your company since? A. Continuously.

Q. And did he represent your company in connection with the award to it of the contract for the system to be installed upon the Broadway and Fourth Avenue lines in Brooklyn? A. Very, very slightly. I wouldn't say that he represented us at all.

Q. Did he have any duties in connection with the matter at all? A. Arranging appointments for me and some of our people.

Q. He was in New York during that period, was he? A. He certainly was part of the time; I don't know how much of it.

Q. Will you produce for the inspection of this Committee, or its expert, the books of your company, covering the period from May, 1914, to the present time? A. I don't know, Senator, whether we would or not. First, are we obliged to do it? If we are, I suppose as an officer of the company I would agree to do it, but if we are not obliged to do it, it is a matter I would refer to our Board. I can say there would be no objection to the proper representative of the Committee examining our books during that period.

Q. Will that be satisfactory to you, if we have an expert accountant go to Rochester and examine the books? A. Yes, sir.

Q. When could he be given an opportunity? A. Any time at all, during business hours.

Q. To-morrow morning? A. Yes, sir.

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Mr. Lewis.— I think we had better leave it like that.

Mr. Salmon.— I would like to say as to that, if I am agreeing to do something which my Board might object to —

Mr. Lewis.— I want to say I wouldn't ask you to produce the books unless I felt the Committee had the legal right to demand the production of the books. I am not assuming to advise you, but I am assuming to take the responsibility of saying that the Committee has the power to compel the production of the books.

Mr. Salmon.— We are willing to have them inspected by an expert of the Committee in Rochester.

Mr. Lewis.— I think that is all for to-day, Mr. Salmon. If you will wait a short time, Mr. Morse will be here and we will introduce him to you and arrangements can be made as to a time that will be convenient in Rochester.

Chairman Thompson.— This Committee authorizes Perley Morse to examine the books of the General Railway Signal Company of Rochester, in pursuance to the stipulation on the record with Senator Lewis, and will you undertake that, Mr. Morse?

Mr. Morse.— I will.

Chairman Thompson.— Mr. Salmon is excused until Friday morning at 11 o'clock, and Mr. Finucane is excused until the Committee wires him.

FRANK J. DELANEY, being first duly sworn, testified as follows:

By Mr. Lewis:

Q. Mr. Delaney, do you know Mr. Banks who sits over by the window there? A. Yes, sir; very well.

Q. When did you see him last? A. I saw him last to-day.

Q. When did you see him prior to to-day? A. Last evening.

Q. How frequently have you seen him the last week? A. Why, I guess — last week?

Q. Within the last week, did you see him every day? A. Yes, sir; every day this week except Sunday.

Q. Do you remember meeting him at No. 1 Dey street, one evening last week? A. Yes, sir.

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Q. Do you remember what you talked about? A. I guess we talked about everything there was in the world.

Q. You must have talked rapidly, didn't you? A. Yes, sir, we had a good deal of talking.

Q. How long were you there? A. I guess I met him there a great many nights. I do not know the particular night to which you refer.

Q. Did you meet him every night there last week? A. Pretty nearly. I wouldn't say every —

Q. Did you meet him one night when he said he had been on the witness stand here before this Committee? A. I have met him a good many nights when he said he had been on the witness stand the day before.

Q. Did you meet him one night last week when he said that? A. I did.

Q. What did he say about the testimony that he had given? A. He told me the questions that had been asked him.

Q. Did he tell you about an item that appeared on his books in relation to a payment to you, or you to him? A. Yes, sir.

Q. What was there about that? A. He told me an item of $206 or something like that.

Q. Paid to you? A. Payable to cash and endorsed by me.

Q. What was the nature of that indebtedness, did he owe you? A. He did.

Q. Did he owe you that amount? A. He did.

Q. What was the nature of the indebtedness? A. A loan.

Q. Money that you loaned to him? A. Yes, sir.

Q. $206? A. No, sir.

Q. How much? A. $500.

Q. Was this the balance of that payment? A. Part was balance, I think, or something I purchased for him.

Q. Was it a rug? A. I bought a rug for him, and he still owes me for that.

Q. When was the loan of $500 made to him? A. June, 1913, or 1914, I think.

Q. Did you take any note for it? A. No, sir.

Q. Any memorandum of any sort representing it? A. Yes, sir.

Q. What was it? A. A check.

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Q. Did you exchange checks with him? A. No, sir; I gave him my check.

Q. Was that drawn to his order? A. Drawn to cash.

Q. It did not have to be endorsed by him in order to get cash on it? A. It didn't have to, but it was.

Q. Had he paid some portion of it from time to time? A. He did.

Q. Did he tell you the purpose for which he wanted to use that amount of money? A. To carry on his business.

Q. Was that at or about the time that he acquired the business from Mr. Wood? A. Well, it must have been about the time, because I think he took over the business from Mr. Wood about the 1st of June, or latter part of May, I am not quite sure.

Q. And he needed that for working capital, did he? A. That is what he told me.

Q. Do you know Mr. Wood? A. I have met him.

Q. Robert C.? A. Yes, sir.

Q. When did you meet him last? A. I haven't seen him since he became a Commissioner.

Chairman Thompson.— What is the difference between knowing him and meeting him?

Mr. Delaney.— I wouldn't say I knew that gentleman sitting there, because I never met him before.

Chairman Thompson.— Is that the extent of your acquaintance with Mr. Wood?

Mr. Delaney.— Yes, sir.

Chairman Thompson.— Just as much as you are acquainted with Mr. Shuster?

Mr. Delaney.— No, sir. I have met him and been introduced to him, but that is all.

Q. Did you meet him more than once? A. I don't think I ever met him more than three times in my life.

Q. Ever have any business relations with him? A. No, sir.

Q. Any social relations? A. He has been a guest of the Bowling Club to which I belong.

Q. And when was that? A. 1913, I think.

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Q. Ever transacted any business with him? A. No, sir.

Q. Have you any business interests in the Bronx? A. No, sir.

Q. Own any property up there? A. No, sir.

Q. Up there frequently? A. No, sir.

Q. Are you the owner of any motor boats? A. Yes, sir.

Q. How many? A. Two.

Q. What are their names? A. One is Muzzie Third, and the other Bobbie Lee.

Q. Where do you keep them? A. Jamaica Bay.

Q. Have you any motor boat in the Bronx anywhere? A. No, sir.

Q. Did you ever have? A. I never did.

Q. Did you ever take Mr. Wood out in them, either of them? A. I never did.

Examination by Chairman Thompson:

Q. How expensive boats are they? A. I guess one is worth about eight hundred dollars and the other about three hundred and fifty dollars, I think.

Q. Which is worth eight hundred dollars? A. Bobbie Lee.

Q. When did you get that boat? A. I bought that of the Reliance Boat Club. That is, it came from there, I didn't purchase it from them.

Q. Who did you purchase it from? A. A party by the name of Moore.

Q. What is his name? A. I don't know his front name.

Q. What is his full name? A. I couldn't tell you.

Q. How did you pay for it? A. Notes.

Q. You must know his name? A. I don't recall it. I can find it out.

Q. Have you the notes? A. No, sir.

Q. Where are they? A. I destroyed them.

Q. How did you pay the notes? A. In cash.

Q. You did not draw any checks? A. No, sir.

Q. Where did you meet this man? A. Through an acquaintance of mine.

Q. Who was that? A. A man named King.

Q. What is his full name? A. Gosh! I don't remember his front name, either.

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Q. How did you meet him? A. I met him probably going around amongst acquaintances.

Q. You are not acquainted with the man King well enough to give his name? A. I can get it.

Q. Is it your idea you want to see Mr. King before you give us his name? A. No, sir, not a bit.

Q. When can you give us this information? A. I can probably get it for you now, if you let me go to the telephone.

Q. Get it, and also the other man's name, Mr. Moore's name, and tell us what they are.

(Witness leaves the stand.)

Chairman Thompson.— Inasmuch as the time has expired for Mr. Schneider to appear before the Committee, we will not listen to him, as he is not here. We will suspend now until to-morrow morning at 11 o'clock, and all witnesses are instructed to be here at 11 o'clock to-morrow morning.

(Whereupon, at 4:45 o'clock P. M., an adjournment was taken to 11 o'clock A. M. December 15, 1915, at the same place.

Following the announcement of the adjournment, Mr. Henry G. Schneider appeared, and asked to be heard, whereupon the Committee reconvened, with Chairman Thompson presiding, and the following proceedings were had:

Chairman Thompson.— We will allow you ten minutes.

Mr. Schneider.—All right, ten minutes. I want to show you a great curiosity. It is the first certified copy of an order of the Public Service Commission that has ever been issued. This is a wonderful curiosity. In here I have somewhere an account of how many million dollars we spent for the Public Service Commission. I have come here to tell you one good thing you have done.

We will start all over — I have in my hand something which has cost $5.70, and I don't know how many hours of time, and I don't know how many telephone calls. What is this curiosity? It is the first properly certified order of the Public Service Commission. Will you kindly read it and give me a little chance to get my breath?

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This Committee has done good work. It did not mean to, but it has. Whenever a Senate Committee comes down to this city they pull off five or six other steals while you are investigating the old one. Unconsciously you have done a great, good work.

Here is a great curiosity. Will somebody who has a good voice read it? I got this last Friday. They couldn't give me the order, and when I got the order the clerk of the Third District Court says, "This thing doesn't certify."

I am forty-seven years old, and in the cradle I heard of plans. I am a German-American, and my father was chased out of Germany for being a kicker, and I have kicked, and I have, as a result, landed in the police station about five times. I hold a meeting on Sunday, and on Monday morning I am in a cell.

Let me read this great curiosity. It never does to tell too much at once.

I have been doing what none of you fellows have done. If you will find for me in the minutes of last winter — if I stopped to pack them up, I would have been too late. This expert says, "I will give my personal affidavit that the order is still in force," and when this clerk, on Saturday, after I got it, and that is December 4th, looked it through, he says, "There is nowhere a certificate that this order is still in force, and you must not get Magistrate Simms into trouble with the New York Central by asking him to issue a summons for the New York Central," and the magistrate had said, "I will give you three summons," and he won't give me one for the real criminal. This Commission issues orders and when I get violations on them, they suspend the order, and I don't know to-day, and if Walker were here, I would put him on the stand and make him swear whether it was in operation. In 1911 I had fifteen hundred violations, all by watchers paid by myself. I have no doubt Eleventh Avenue will be —

Chairman Thompson.— Your time is up.

Mr. Schneider.— Won't somebody read this —"I further certify that the said order has not been abrogated, and was in full force and effect December 1, 1915."

Chairman Thompson.— Let me take that. This order provides that the "New York Central and Hudson River Railroad Company be and is directed not to operate any freight trains on

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Eleventh avenue, borough of Manhattan, city of New York, within the following hours: On Sundays, between 10 A. M. and 12 o'clock noon; upon other days of the week, between 6:50 A. M. and 7:20 A. M.; between 8:15 and 9 A. M.; between 11:50 A. M. and 12:55 P. M.; between 2:50 P. M. and 3:30 P. M.; between 4:45 P. M. and 5:15 P. M. This order takes effect immediately, and it is in force and effect until further ordered." And a certificate attached to it, dated the 10th of December, 1915, certifying the order is in force.

All personal remarks made by anybody by reference to name are expunged. All remarks in relation to any person mentioned are expunged from the record.

You may file your brief any time this week.

Mr. Delaney may appear to-morrow morning at 11 o'clock.

(Whereupon an adjournment was taken, as appears heretofore, to 11 o'clock A. M. Wednesday, December 15, 1915, at the same place.)

DECEMBER 15, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway

The Chairman.— The Committee will come to order, and will stand in open recess until called.

AFTER RECESS

The Chairman.— The Committee will come to order.

WALTER D. UPTEGRAFF, sworn as a witness, testified as follows:

Examination by Mr. Lewis:

Q. Where is your residence, Mr. Uptegraff? A. Pittsburgh.

Q. And what is your business? A. President of the Union Switch and Signal Company.

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Q. How long have you been president of that company, Mr. Uptegraff? A. Since July 15, 1914.

Q. And prior to that time what was your official connection with the company? A. Vice-president in charge of finances.

Q. And for how long a time had you been vice-president and in charge of the finances? A. I was elected about the middle of March, 1914.

Q. And prior to that time, what had been your position with the company? A. I was a director, I think, for a year or so.

Q. And not an officer? A. Not an officer, no.

Q. Had the company at the time you were elected a vice-president in charge of the finances of the company an officer by the name of Johnson?

The Chairman.— Let us get a list of the officers.

Q. Suppose you give a list of the officers of the company prior to your election as president? A. H. G. Prout was the president of the company.

Q. What was his name — Henry? A. Henry G. Prout. The vice-president in charge of sales was Mr. Sydney G. Johnson. The secretary and treasurer was Mr. James H. Johnson.

Q. Related to Sydney G. in any way? A. No.

Q. And had there been prior to that time a vice-president in charge of finances? A. No.

Q. And you were the first vice-president to have charge of the finances? A. Yes, sir.

Q. How long had Mr. Prout been president of the company? A. He had been vice-president of the company for some years. I couldn't state just how many years now — six or eight years. Mr. George Westinghouse had been president of the company. Mr. Westinghouse died on the 12th of March, 1914, and Mr. Prout was elected president to fill that vacancy.

Q. Did Mr. Westinghouse devote his time to the business of the Union Signal and did Mr. Prout have charge — A. Mr. Prout was vice-president and general manager of the company and had general charge of its affairs, and after the panic of 1907 Mr. Westinghouse was not able to give very much time to the company's business.

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The Chairman.— Mr. Prout virtually acted as president during all that while, didn't he?

Mr. Uptegraff.— Yes.

Q. Well, then, at the time you were elected vice-president and in charge of the finances, Mr. Sydney G. Johnson was vice-president in charge of sales, was he? A. Yes, sir.

Q. Will you tell us the circumstances which led up to the election of yourself as president in charge of finances? A. Well, the only reason for electing me as vice-president in charge of finances that I know of was that the people who owned considerable volumes of the stock wanted a representative.

Q. Well, there had been a change in the stock ownership? A. Yes, sir.

Q. And that led to the change in the vice-president in charge of finances? A. Yes, sir.

Q. Now, was there an occasion after your election when you had some disagreement with Mr. Johnson in reference to expenditures which he had planned to make — in reference to an expenditure, we will put it that way? A. Yes.

Q. You may tell us what there was about that. A. In the latter part of June or early part of July, Mr. Johnson wanted five thousand dollars, and I wanted to know what he wanted it for. After some little time, not very long, I was told that he wanted the five thousand dollars for the purpose of paying it to Mr. Wood.

Q. One of the Public Service Commissioners of the First District? A. He was one of the Public Service Commissioners.

Q. And you understood at the time that the money was to be paid to Commissioner Wood of the Public Service Commission? A. That is what Mr. Johnson said.

Q. And what happened in connection with that request? A. I refused to pay out any money for it, and after some controversy over it the matter was taken to the board of directors.

Q. A meeting of the board held for the purpose of discussing the matter? A. Yes, sir.

Q. At Mr. Johnson's request? A. Well, the call of the meeting was issued by Colonel Prout, the president.

Q. Well, did you understand that it was issued at the request of Mr. Johnson? A. Yes, sir.

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Q. And for the discussion of this proposition? A. Yes, sir.

Q. Well, now tell us what occurred at the meeting as far as it relates to this subject? A. The meeting was — I might state, to begin with, there were only a bare quorum of the directors in this company — out of the nine members, four of them were in Europe, and there was some delay in getting a meeting — I think a week. Finally the meeting was arranged for the 15th of July. The meeting was held, I think, at 10 o'clock.

Q. At Pittsburgh? A. At Pittsburgh. Mr. Johnson was there, and as a result —

Chairman Thompson.— Who else were there?

Q. What other directors, Mr. Uptegraff? A. The other directors were Mr. Prout, Mr. John R. McCune, Mr. M. S. Rosenwald, Mr. Thomas Rodd and myself.

Q. Was Mr. Johnson a director? A. No, sir, he was not. As a result of the discussions at that meeting the committee, consisting of Mr. Rodd, Mr. Rosenwald and Mr. McCune, unanimously demanded the resignation of Mr. Prout and Mr. Johnson.

Q. And were those resignations submitted? A. Yes, sir, at that meeting.

Q. Now tell us, did Mr. Johnson explain to the board of directors at its meeting the purpose for which he desired to use this money? A. Yes, sir.

Q. Did he mention Commissioner Wood's name? A. Yes, sir.

Q. And stated that it was to be used for influencing the Center street loop contract? A. Yes, sir; that was his statement.

Chairman Thompson.— Well, what was his statement in that respect?

Mr. Uptegraff.— The statement was that he had arranged or agreed to pay Commissioner Wood this sum of money if the Center street loop were awarded to our company.

Chairman Thompson.— Did he explain to you that the Public Service Commission stood two to two on that and that Wood had the casting vote?

Mr. Uptegraff.— I don't recall anything of that sort was said.

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By Chairman Thompson:

Q. But he stated he had an arrangement with Mr. Wood by which he was to pay him that money? A. Yes, sir.

Examination by Mr. Lewis (resuming):

Q. And in return for which Mr. Wood was to vote for the award of the contract to the Union Switch and Signal Company? A. Yes, sir.

Q. And the request was refused, was it, at that meeting? A. Yes, sir, very indignantly.

Q. What? A. Very indignantly.

Q. And Mr. Prout's resignation and Mr. Johnson's resignation were demanded? A. Yes, sir.

Q. And were they furnished at once? A. They were not furnished at once, but they were furnished. They protested and begged for time, and so on.

Q. When did they finally resign? A. They resigned that same day, at that same meeting.

Q. And were their successors elected at that meeting? A. I was elected president at that meeting, and Mr. T. W. Seaman was elected vice-president to succeed me, but as I recollect, there was no vice-president in charge of sales elected at that time or at any time since.

Q. Had you ever known Commissioner Wood, Mr. Uptegraff? A. No.

Q. Ever see him? A. Not that I know of.

Q. Had your company had any dealings with Commissioner Wood prior to that time? A. As far as I know, only in connection with this Kansas City, Clay County and St. Joseph Railroad contract.

Q. Will you tell us what you know of that transaction? A. About the 1st of May we received a request from Mr. Sydney Johnson to send a check for fifteen hundred dollars for the payment of Mr. Wood's services in connection with that contract.

Q. With a contract which your company had obtained from that company? A. Yes, sir.

Q. Did you send such a check? A. We did after some inquiry. We sent a check, yes, sir.

Q. And have you the cancelled check in your possession? A. Yes, sir; I have all the papers.

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Q. Will you produce it? A. (Witness produces papers.) That is the voucher and this is the check that accompanied the voucher.

Mr. Lewis.— I offer in evidence a letter written on the stationery of the Union Switch and Signal Company, sales department, dated 30 Church street, New York, April 30, 1914, addressed

> "J. H. Johnson, Esq., Secretary and Treasurer, the Union Switch and Signal Company, Swissvale, Pennsylvania: Dear Sir: Please have voucher made up for Mr. Robert C. Wood for special representing services, fifteen hundred dollars. This in accordance with instructions under arrangement with Colonel Prout, and I would appreciate it if this voucher could be in this office on Monday morning. The writer will advise you when he is next at Swissvale, just where the charge is to apply. Yours very truly, S. G. Johnson."

Q. "S. G. Johnson," is that? A. It is "S. Johnson." That is his signature, the way he signs his name.

Q. The initials "S. J. C." pencil memorandum, "Charge agent's expenses," do you know in whose handwriting that pencil memorandum is, Mr. Uptegraff? A. That is J. H. Johnson.

Q. The secretary? A. The secretary and treasurer.

Q. That is his handwriting? A. Yes, sir.

Q. And also pencil memorandum "President Northwestern Supply Company;" initials "J. H. J. 5/4/14;" is that all Mr. J. H. Johnson's handwriting? A. The words "President," "Northwestern Supply Company" do not appear to be in his handwriting.

Q. Do you know in whose handwriting they are? A. No, sir; I do not recognize them.

Q. The initials, however, are in the handwriting of J. H. and the date? A. Yes, sir.

Q. Also pencil memorandum "Refund of five hundred received 5/11/14;" in whose handwriting is that pencil memorandum? A. I couldn't say. I do not recognize the memorandum there.

Q. Also pencil memorandum "K. C., Clay C. and St. J.," do you know in whose handwriting those are? A. No. It seems to be the same as the Northwestern Supply Company, but I do not recognize it.

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Q. Attached to this letter which I have just read is a voucher issued by the Union Switch and Signal Company, "Voucher No. 42742, $1500, date May 4, 1914, to Robert C. Wood, for services. Vouchered May 4, 1914." On the face of the voucher, endorsement "Examined, approved correct, and recorded, W. M. Ebberts, Chief Accountant?" A. Yes, sir.

Mr. Lewis.— I also offer in evidence what purports to be check No. 42742, on voucher No. 42742, reading as follows:

"Union Switch and Signal Company of Pittsburgh, Pennsylvania. Swissvale, Pennsylvania, May 4, 1914. Pay to the order of Robert C. Wood $1500, One Thousand Five Hundred Dollars, when properly endorsed. Union Switch and Signal Company, W. D. Uptegraff, Vice-President, J. H. Johnson, Treasurer. To Union National Bank, Pittsburgh, Pennsylvania." On the reverse of the check, "The Union Switch and Signal Company of Pittsburgh, Pa. To Robert C. Wood, for amount of account to date per statement and invoice on file April 30th, for special services, $1500."

"Endorsements by payee as acknowledgment in settlement in full of account as stated within." Robert C. Wood. Rubber stamp endorsement "Pay to the order of any bank or trust company, May 6, 1914. Commercial Trust Company of New Jersey. William J. Field, Treasurer." With the figures "55–41" appearing prior to the words "of New Jersey," and the same figures "55–41" following the words "New Jersey." Also rubber stamp endorsement "Farmers' Deposit National Bank, Pittsburgh, Pennsylvania, Pittsburgh Clearing House, May 7, 1914. All prior endorsements guaranteed." The figures "11" being also in the face of the rubber stamp check. Perforated endorsement "U. N. B. 5/7/14."

Q. This check was forwarded in payment of the claim of Mr. Robert C. Wood as approved by you and by the treasurer of the company, was it, Mr. Uptegraff? A. It was paid as a voucher as read here with this letter, of Mr. Johnson, covering the approval of the payment. This is just the signature of the check.

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Q. Mr. Uptegraff, will you give us the addresses of the directors of your company who were present at that meeting? A. Henry G. Prout lives in New Jersey — I can't recall.

Chairman Thompson.— Lives at Nutley?

Mr. Uptegraff.— That is it, Nutley, N. J., or did at that time. John R. McCune, he is president of the Union National Bank of Pittsburgh.

Chairman Thompson.—And lives in Pittsburgh?

Mr. Uptegraff.—And lives in Pittsburgh.

Chairman Thompson.— Rosenwald?

Mr. Uptegraff.— M. S. Rosenwald, Chicago.

Chairman Thompson.— What is he, a lawyer?

Mr. Uptegraff.— No, sir; he is a merchant, and he lives on Grand boulevard, I can't give you the number. His business address is 500 South Franklin street, Chicago.

Chairman Thompson.—And Rodd?

Mr. Uptegraff.— Thomas Rodd is chief engineer of the Pennsylvania lines. His address is Union Station — Pennsylvania, Pittsburgh, Pa., and he lives in Pittsburgh.

Chairman Thompson.—And you live in Pittsburgh?

Mr. Uptegraff.— Yes.

Mr. Lewis (resuming):

Q. At the time that the $1500 check was issued, had you had any verbal discussions with Mr. Johnson, in which Mr. Wood's name was mentioned? A. No, sir.

Q. None at all at that time? A. None at all. The first time I ever heard of Mr. Wood's name was on receipt of this letter — when I first saw this letter asking for a check.

Q. Now, after the receipt of the letter, did you have any conversations with Mr. Johnson on the subject of Mr. Wood? A. I can't recall that I had any conversations exactly with Mr. Johnson, but I had information supplied to me. I can't recall just now as to who he was and what connection he had with this contract.

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Q. Was anything said to you in connection with the issue of this check, that Wood had been appointed or his appointment was under consideration as a Public Service Commissioner? A. No, sir.

Q. The matter was not mentioned at all? A. No, sir.

Examination by Chairman Thompson:

Q. I suppose you have a record of the minutes of that meeting? A. Well, we have a record of the minutes of the meeting; yes, sir.

Q. And that is at Pittsburgh? A. That is at Pittsburgh.

Chairman Thompson.— You may be excused, Mr. Uptegraff, until 3 o'clock this afternoon. We will take an elastic recess at this time.

AFTER RECESS

The Chairman.— The Committee will come to order. All witnesses excused until two-thirty.

Mr. Lewis.— Just before you suspend, I desire to put this statement on the record. I have had a conference with Mr. Ledyard, who was subpoenaed to appear here as a witness this morning. Mr. Ledyard has said that he is willing to testify as to certain matters which in his opinion are not privileged. As to other matters affecting the interests of his clients, P. Erskine Wood, Mrs. Alice R. Wood, Beekman Winthrop and R. R. Colgate, he will feel compelled to claim his privilege as their counsel, and will decline to answer questions. Under the circumstances, I excuse Mr. Ledyard, and do not feel that the Committee is called upon to put him on the stand.

Chairman Thompson.— The position of the Chair is that as far as Mr. Robert C. Wood and Mr. P. Erskine Wood are concerned, and their refusal to answer questions, that they are not justified in their refusal, but in relation to Mr. Ledyard, who has acted as attorney for these people, I think Mr. Ledyard is entitled to claim his privilege under the code. We will suspend until 2:30 P. M.

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AFTERNOON SESSION

WALTER D. UPTEGRAFF on the stand.

Examination by Mr. Lewis:

Q. Mr. Uptegraff, you gave the names this morning of the directors who were present at this meeting at which the statement was made by Mr. Johnson as to the purpose for which he desired to use the money. Those names were — are you willing to ask the two of these directors — are there two of them in Pittsburgh? A. Mr. Rodd is not now a director of the company.

Q. Well, is he where you could reach him without difficulty? A. Yes, if he is in Pittsburgh, as far as I know.

Q. And Mr. McCune is in Pittsburgh? A. Pittsburgh, yes.

Q. Could you get into communication with them and ask them to come here to-morrow and ask them to testify as to what took place at that meeting? A. Yes.

Q. Will you do so? A. Yes. Do you want any of the others?

Q. I think those two. I don't want to ask the Chicago man to come, and I don't know as I ought to ask Mr. Prout to come, but McCune and Rodd, if they are in Pittsburgh, and will leave to-night and come here to-morrow, we would greatly appreciate it. A. All right, sir.

Chairman Thompson.— You may be excused until to-morrow at 11 o'clock.

Mr. Finucane and Mr. Salmon are excused until 11 o'clock to-morrow. Mr. Delaney may be excused until to-morrow. Mr. Delaney, you are right here in the building?

Mr. Delaney.— Yes, upstairs.

Chairman Thompson.— Then you may be excused, and if we want you we will send for you.

Mr. Delaney.— Thank you very much.

TRAVIS H. WHITNEY on the stand.

Examination by Mr. Lewis:

Q. Mr. Whitney, I find from the testimony which you gave before this Committee last spring or last winter, February 12th,

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page 867 of the report, that you testified in relation to award of the Center street loop contract to the Federal Company. For the purpose of having a concise statement upon this record at this time, will you tell us the history of that contract from the time that bids were opened by the General Municipal Railways Corporation, the New York Municipal Railways Corporation? A. Well, partly, also to summarize what I testified to before — under the provisions of the dual contract, it was necessary for the New York Municipal in making a contract for any such matter as signals to submit a proposed contract to the Commission for its approval. The New York Municipal obtained bids for the installation of signals in the Center street loop. Those were sent to the Commission by the company for its approval as with their recommendation as to the award of the contract a request for approval of the award of the contract. A day or two before that came in, as I recall the matter, I either heard Commissioner Wood request Judge McCall, or Judge McCall told me that he had requested him, stating that he understood this matter of signal contracts was coming in, and he would like to have it assigned to him, and Judge McCall said he would be very glad to assign it to him.

By Chairman Thompson:

Q. You say you saw either Judge McCall or you heard Judge McCall say he had requested it of him? A. I heard Commissioner Wood request Judge McCall that it be assigned to him, or Judge McCall told me that Commissioner Wood had requested it.

Q. Your first statement was a little ambiguous as to who requested, McCall or Wood. A. And when the papers came in they were assigned to Commissioner Wood.

By Mr. Lewis:

Q. What was the occasion for a hearing upon the bids, Mr. Whitney? A. Well, there really was not any hearing. Commissioner Wood held a conference on the matter in his room, which was attended by the representatives of the two signal companies and the New York Municipal, and representatives of and subordinates of the Commission. I may say as I recall at that time a protest had come in from the Union Company against the award of the contract to the Federal, and whatever took place at the conference is here so far as I am concerned. They protested

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against the award of the contract to the Federal, who was the lowest bidder, on the ground they could not carry out the contract without infringing on patents belonging to the Union.

Q. The Union was the next highest bidder? A. Yes. I talked with one or two of our men at that conference, and they advised very strongly that a stenographer be present at the next adjourned conference, and the stenographer was present and took notes of the conference, which are in the file on this matter. I talked with our people after that conference — do you want me to go ahead and summarize what I testified to before?

Q. Yes. A. I talked the matter over particularly with Mr. Harkness, and because — in fact, I had been told that Commissioner Wood had been connected in some way with the Union Company before he came to the Commission, and this request that this matter be assigned to him and the nature of the conference, and the fact that it was so very important that the signals be installed in the Center street loop at the earliest moment, in order that they might get into operation, Mr. Harkness thought it very important that that contract be acted on at the earliest possible moment, and I suggested to him that he get downstairs at the earliest moment strong reports from the counsel and chief engineer dealing with this matter, and recommending that the contract be awarded in accordance with the bidding, in view of the fact that the Federal Company would need to give a bond, the amount of which could be increased so as to save the city and the company harmless from any suits of infringing patents. That was all we were interested in, getting signals for the Center street loop. Those reports came down, and I spoke to Commissioner Williams about the matter, stating to him that I thought the situation was such as to require action by the Commission promptly, and I placed the matter on the calendar of the Commission, and it was acted on at the meeting of the Commission, as I recall it, of July 30, 1914.

Q. And awarded to the Federal Company? A. Yes, sir. The action was authorizing the New York Municipal to enter into a contract with the Federal.

Q. The award had practically been made by the New York Municipal and the approval of the Commission was all that was required? A. Yes, sir.

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Q. Did you understand from any source that any representatives of the Union Signal Company were in attendance at the conference before Commissioner Wood? A. Yes, sir.

Q. Did you hear the names of any representatives of the Union Signal Company mentioned in connection with those conferences? A. Well, I know Mr. Johnson was there representing the Union, and I think there were probably other representatives. The notes, stenographer's notes of that second conference, will show the attendance.

Q. But you understood that Mr. Johnson was there also? A. Yes, sir.

Chairman Thompson.— The engineer's report, I think your testimony shows, was made on the 20th of July, and voted on the 30th?

Mr. Whitney.— The counsel and chief engineer's reports were almost at the same time, possibly the same day.

Chairman Thompson.— Who asked the engineer to make a report?

Mr. Whitney.— Well, I suggested to Mr. Harkness that he get counsel's and chief engineer's reports down.

Chairman Thompson.— It was you that forced those reports on the 20th?

Mr. Whitney.— Well, I asked that they come down.

Mr. Lewis (resuming):

Q. One other question. Now, this was placed upon the calendar, and acted upon by the Commission without having any report from Commissioner Wood, as a result of the conference and hearings and whatever he had conducted? A. Yes, sir.

Chairman Thompson.— You swore last spring that before Wood went on the Commission that he was a frequent visitor at the Commission?

Mr. Whitney.— Yes, sir.

Chairman Thompson.— Is that a fact?

Mr. Whitney.— I testified that he had been a frequent visitor at the offices of the Commission. I did not state for what purpose.

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I noticed the questions down here have indicated that I have stated that he came there for specific purposes. I simply testified he had been a frequent visitor.

Chairman Thompson.— What do you mean by frequent?

Mr. Whitney.— I imagine I saw him there ten or twelve times, and I know he was a visitor at the Bureau of Electric and Equipment Inspection with Mr. Connett, who was then the chief of that bureau.

Chairman Thompson.— Now, do you know Sydney Johnson?

Mr. Whitney.— So far as I know, I never saw him.

By Mr. Lewis (resuming):

Q. All this transpired in the early part of the month of July, did it not, the receipt of the Brooklyn, of the bids and approval? A. The communication of the B. R. T. came at the end of June. As I remember, that second conference took place on the 2d of July.

Q. That was the one at which you had a stenographer present? A. Yes, sir. The action of the Commission was on the 30th of July.

Q. And I think you said it was two or three days before the communication from the company submitting the bids and asking for approval were received, that Commissioner Wood asked that when received it be referred to him? A. A day or two.

Q. Indicating that he had knowledge of the fact that such a matter was to come to the Commission? A. I presume so.

Chairman Thompson.— Now, you say that at the time of the hearing on the 30th of July that Mr. Wood did not make a report?

Mr. Whitney.— No, sir.

Chairman Thompson.— Well, did he have some papers in reference to the hearings that were before him? Did he have possession of the papers?

Mr. Whitney.— He had the papers that came in from the company.

Chairman Thompson.— Did he produce them on the 30th of July? A. No, sir.

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Chairman Thompson.— Where were they at that time?

Mr. Whitney.— In his possession, I assume.

Chairman Thompson.— Do you mean in his office, that he kept them himself?

Mr. Whitney.— Yes, sir.

Chairman Thompson.— How long did he keep those papers?

Mr. Whitney.— Well, at the time I testified before this Committee on this matter before —

Chairman Thompson.— That was in February?

Mr. Whitney.— Colonel Hayward, then counsel to the Committee, asked me — I think he came to the office and wanted to see all the papers in connection with this signal matter, and I furnished him some of the papers, and I told him there were some I could not furnish because that they were then in the possession of Commissioner Wood. I afterwards obtained them from him, and turned them over to Colonel Hayward.

Chairman Thompson.— From the time of his hearing down to February, 1915, he kept possession of the papers, and did not turn them in to the regular files of the Commission, is that correct?

Mr. Whitney.— Yes, sir.

Chairman Thompson.— We will suspend now until to-morrow at 11 o'clock, and the witnesses are directed to appear, except Mr. Whitney, who will come if I ask him.

DECEMBER 16, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Meeting called to order at 11 A. M.

Senator Thompson acting as Chairman.

The Chairman.— The Committee will come to order.

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SIDNEY GEORGE JOHNSON, sworn as a witness, testified as follows:

The Chairman.— Now, Mr. Johnson, you are here as a witness in relation to a transaction in which your name was brought in through the testimony of Mr. Uptegraff yesterday, and that testimony is of a nature which might be prosecuted, and we are going to and it is our duty as an investigating Committee to go in and find the truth of the transaction, and also to take care or protect the enforcement of any statute that might exist. For that reason I am going to ask you if you will sign a waiver of immunity before you proceed to testify?

Mr. Johnson.— Well, I am here to tell all I know and all the truth. I do not want to sign away anything that takes away any rights I may have in the matter.

Chairman Thompson.— Well, it might. As I understand, you decline for the present to do that?

Mr. Johnson.— Yes, sir.

Examination by Mr. Lewis:

Q. Mr. Johnson, what is your business? A. I am vice-president in charge of the sales for the General Railway Signal Company of Rochester now.

Q. How long have you held that position? A. I went with the General Company on August 1, 1914. Mr. Salmon, the president of the company, however, gave me a month's leave of absence before I started active duties. I did not start active duties until September 1st, and I was not given entire charge of the sales by bulletin announcement from the president, I think, until November 1st.

Q. 1914? A. Yes, sir.

Q. Prior to your employment by the General Railway Signal Company what had been your business connections? A. I had been with the Union Switch and Signal Company for about fifteen years.

Q. And what at the time of your leaving that company had been your position? A. I was in charge of sales as vice-president.

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Made vice-president sixty days or ninety days before I was discharged from the Union Switch and Signal Company.

Q. Who were the officers of that company at the time that you were made vice-president? A. Colonel Prout was first vice-president and general manager, and then was made president at that same time, I believe, as nearly as I can remember.

Q. That was at or about the time of Mr. Westinghouse's death? A. No, sir. I think Mr. Westinghouse had been dead quite some months prior to that.

Q. And the company had been without a president? A. The company I think had been without a president.

Q. Mr. Prout acting as vice-president in charge of the business? A. Yes, I think so.

Q. Where had been your office as sales manager for the company? A. 30 Church street, New York.

Q. 30 Church street in this city? A. Yes, sir.

Q. How long were you in charge of the office in New York? A. Well, I was general sales manager there for I think three or four years; I don't know the exact dates. Prior to that time I had been eastern manager having just the eastern district, which is localized on the eastern coast, having the Montreal office under it. Do you want me to go on prior?

Q. Yes. A. Prior to that I had been engineer of construction. I carried out construction work through this eastern territory. I started with this company as a draftsman and engineer.

Q. Well, now, was there a time when you had to do with the presentation of a bid for the doing of some work contemplated by the General Municipal Railway Corporation of Brooklyn? A. Yes, sir.

Q. Tell us when that was, if you will? A. That was what they call the loop contract.

Q. Yes — Center street loop? A. Yes. I think there was one prior to that, a small one.

Q. We don't care particularly about that. A. And then the second one came along — was an extension to that early installation, called the Center street loop. We had the estimates to prepare and the bids to make.

Q. And when was the bid submitted? A. I don't recall that date. It is a matter of record.

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Q. Well, approximately — the summer of 1914, was it not? A. I think it was pretty early in the summer of 1914 the bid was made to the New York Municipal Railway in Brooklyn.

Q. Go on now and tell us what you know of what happened and took place in connection with that bid so presented. A. The bid was submitted in Brooklyn to the proper officials. I think the chief engineer of the company.

Q. What other bids were submitted, if any, do you know? A. Well, I think it was one bid — we made the one bid.

Q. What other companies submitted proposals? A. I think the Federal Company and the Union and the General Railway Signal, and I think the Hall Signal. I am not sure as to the latter company — I think they did.

Q. Which was the lowest bidder? A. The low bidder was the Federal Signal of Albany.

Q. Federal Signal Company, was it not? A. Yes.

Q. And your company was the next low bidder? A. Yes, I think we were. I think our bid was two hundred thousand dollars flat.

Chairman Thompson.— What was the low bid? We might as well put it on the record here — a hundred and ninety-six thousand, wasn't it?

Mr. Johnson.— I think that was the figure, I am not sure.

Mr. Shuster.— One hundred ninety-six thousand dollars was the bid of the Federal — the unit prices aggregated approximately the sum of a hundred and ninety-six thousand.

Mr. Lewis (resuming):

Q. Go on, Mr. Johnson, and tell us just what you know of that transaction? I rather you would tell it in your own way than to ask you leading questions. A. Well, as I recall it, the bids were not acted on right away. They were held up for some time.

Q. By the company? A. By the company, I believe. A little later on — I don't know what the exact time would be — Commissioner Wood telephoned to me to get some particulars about the systems we were figuring on.

Q. Go on. A. Details of the system and about the patents. And I went over to his office and told him what I could about our

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system. He asked me a great many questions as to what comparisons there were between our system and other systems, and I told him to the best of my ability.

Chairman Thompson.— Where was that?

Mr. Johnson.— It was in his office.

Chairman Thompson.— He had two or three offices here in New York?

Mr. Johnson.— It was in the office, in the Park Row Building.

Chairman Thompson.— Public Service Commission?

Mr. Johnson.— Yes, Public Service Commission.

Chairman Thompson.— When was that?

Mr. Johnson.— I couldn't say the exact date, but I think it must have been after the bids were referred to him for consideration, whenever that time was of record.

Chairman Thompson.— Early June, then?

Mr. Johnson.— I think it was.

Mr. Lewis (resuming):

Q. Go on, Mr. Johnson. Just what did he want in the way of information? A. Well, he wanted to know about what the relative position on patents was between the different companies bidding on this work, and I told him to the best of my ability that I did not consider that the Federal Company had a license under these patents. There was a license between the General and the Union Company. Of course, I explained in detail what our system was, and how it operated by a verbal description, and made little pencil sketches for him to show the track circuit control of signals, and so on, and of course did my best to show him what we had to offer, and what our bid covered. That was about all that transpired at that talk.

Q. At that time? A. Yes, sir.

Q. Had you ever seen Commissioner Wood prior to the time that he telephoned to you? A. Yes, sir.

Q. When had you first known him? A. Oh, quite a few months prior to that, I think probably six or seven months.

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Q. When was the next time that you saw him? A. You mean after I first met him?

Q. No. After he told you to come to his office? A. Well, then, after that an interview was arranged by Mr. Wood.

Q. By telephone? A. I think it was by telephone.

Q. Go on. A. I should meet him at his office.

Q. Did he telephone to you? A. Yes, he telephoned that I should meet him at an office, as I remember it, on Exchange place. I remember going over there because I had to walk through the curb brokers' market. I remember that, and it was because a lot of the brokers were in the middle of the street that I remember going through there. I don't remember just what time of day it was, but I know it was while these brokers were out doing business. And I got to Mr. Wood's office in this building, which was an office apparently used for the storage of furniture to some extent. There was a desk in it, and when I got there there was some young man in there with Mr. Wood. I don't know who he was.

Chairman Thompson.— Was there any name on the door?

Mr. Johnson.— I don't know; I think there was.

Chairman Thompson.— Wood's name on the door?

Mr. Johnson.— I don't recall that it was.

Chairman Thompson.— Was it 43 Exchange place?

Mr. Johnson.— I don't know the number, but I could point the building out to you, I think. I don't remember the number.

Mr. Lewis (resuming):

Q. Go on. A. Mr. Wood asked this young man to step out for a few minutes while he used the office, which he did.

Q. Just a single room, was it? A. Yes. And then we had a further talk.

Q. Well, tell us what was said there? A. And at that conversation Mr. Wood wanted to know —

Chairman Thompson.— Just tell what was said now, just as near as you can.

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Mr. Johnson.—Well, Mr. Wood asked me whether there would not be a commission in this contract affair, if he could influence it for me.

Q. And what did you say? A. I told him that I had not any authority to talk to him on a matter of that kind. And he went on to say that he thought that a job of that size ought to carry at least five thousand dollars, and I told him that I was not able to say what could be done on it, because I had no authority.

Q. Did he say whether or not at that time the matter had been referred to him, and was pending before him for hearing? A. I don't recall that he did.

Q. Did you know, as a matter of fact, that the matter was pending before him for a hearing? A. I don't believe that I did; I don't recall where it was. I knew the Commission had to pass upon it before it would go back to Brooklyn to be signed to whoever got it.

Q. And did you know there had been at that time any hearings on the matter before Commissioner Wood? A. There was a hearing called. There was a sort of informal hearing called at Mr. Wood's office, at which I attended, and I think our patent attorney attended, and I believe the Federal people were present with their representative at this hearing.

Q. Was that prior to the time that you met Commissioner Wood at his office? A. I don't think so. I think it would be after.

Chairman Thompson.—Are you sure about that?

Mr. Johnson.—I am not very sure about it, whether it was before or after. But that meeting was adjourned, as I recall it, and later there was another official hearing called, at which there was a regular attendance of the bidders and their lawyers and patent attorneys.

Q. Now, was this official hearing called after a conversation that you had with Mr. Wood in his office? A. Yes, some little time.

Q. And let us ask you this question. Had there been any further discussion between you and Mr. Wood on the subject of a commission to be paid to him for influencing the contract? A. Well, now right there you want me to tell this the way —

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Q. I want you to tell it just as the truth is. A. Now, right there I told Mr. Wood, as I said, that I had no authority to answer a question of that kind, and I think either that same evening or the next night at the latest, I telephoned to Colonel Prout at his club in Pittsburgh, where he lived when he was in Pittsburgh, from my home, giving him the circumstances of this conversation with Mr. Wood.

Q. Did you repeat to Colonel Prout that Commissioner Wood had asked for cash compensation for influencing the contract? A. Yes, sir.

Q. Go on. A. And I asked Colonel Prout what we should do about it, or what we could do about it, and Colonel Prout, as I remember his reply, it was about like this: "You can't quarrel with Wood; you mustn't quarrel with Wood; you mustn't antagonize, but I can't let you know what we are going to do on that; we will have to tow him along (to use the Colonel's words on it) for the time being." Now, shortly after that I went to Swissvale in the ordinary course of my business. About sixty or ninety days prior to the happenings that I am talking about now, I had been made vice-president, but my duties had not been changed. I still had charge of sales as sales manager when the Colonel was made president, but the Colonel wanted me to take up some engineering matters over at Swissvale, and asked me to spend more time at Swissvale and suggested that I have an office at Swissvale as well as New York, which I did. And it was going on about that sort of thing that took me out to Swissvale in the ordinary course of events. I went out there, and went in to see Colonel Prout in the morning, in his office. And in his office with him was Mr. Uptegraff, who had been our vice-president in charge of finances for some months. During the conversation on matters generally, the Colonel wanted to know how things were going, as he usually did. We talked about, I don't know — several matters, and during this conversation the question came up as to what disposition would be made of this matter relating to Mr. Wood's situation.

Q. This visit to Swissvale was just a few days subsequent to your conversation on the telephone with Colonel Prout? A. Yes, sir; as nearly as I can fix it, Mr. Lewis. I don't know the exact date. I know we had the conversation at Swissvale. This question came up and Colonel Prout said that he did not know how a

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matter of that kind would be handled, and as I recall it, asked Mr. Uptegraff how he would suggest handling a matter of that kind. Mr. Uptegraff apparently did not know how he would handle it, and I stated that I was there for instructions on it. I did not know it could be handled, I am sure. During this conversation the suggestion was made by Mr. Uptegraff that the only way he could see of handling an expenditure of that kind would be to charge it up on my personal expense account, and voucher for it in the regular way.

Chairman Thompson.— Who said that?

Mr. Johnson.— Mr. Uptegraff. Now, I objected to that visit, and the more I thought about it, the more I thought that it was not a fair way of handling the matter, and I told Colonel Prout that I would not sign for any moneys to be distributed by the company that the management would not stand sponsor for, and that if I was to be put in that sort of position, I'd rather chuck up my job than go on with it. That is as near as I remember the conversation, and I think that is where the matter dropped.

Q. Now, what happened after you got back to New York? A. I don't know whether I called up Mr. Wood, or Mr. Wood called up me, but I know that I saw Mr. Wood. Just when I don't recall the dates.

Q. Conversation with him? A. And in the conversation with Mr. Wood, talking about the situation generally, I told him when he wanted to know how the matter stood that we had talked about, that I was in no position to talk to him on the subject at all, and that is the gist of that conversation, as near as I can tell it.

Q. Was that prior to the formal hearing that you have spoken of? A. Yes, it was. I went to the formal hearing with our attorneys, which was held in the special room they have over there in that building.

Q. Hearing room? A. Hearing room, yes, sir. And at that hearing our attorney, Mr. Kruse, a patent lawyer, was present, and I think Mr. Bowling, our civil counsel here in New York also. I was present, but I did not take any part in the proceedings, but the Federal people were represented. I don't know whether the others were or not. The railway company officials were there.

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Q. And do you remember what, if any, action Commissioner Wood took at that time? A. No. It was a long, drawn-out, technical argument on patents back and forth between the lawyers and I don't know as any action was taken. I know that was the last time I ever saw Mr. Wood, and I have never seen him since.

Q. Have you any way of fixing the date of that meeting? A. No, sir, except I think it would be a matter of record, that hearing. It was a regular hearing.

Q. Did you know of the fact at the time, that the contract was awarded, that it had been awarded, or would be awarded? A. No, sir; I did not.

Q. When did you first know that it had been awarded? A. Well, that was some time after I had left the Union Switch and Signal Company's employ.

Q. When did you leave the Signal Company's employ? A. I was called to Pittsburgh after this hearing for a special meeting of the board of directors, and that was on July 15th, and on that day, in the afternoon, Mr. Uptegraff — I was outside waiting and Mr. Uptegraff came out and said that the committee of the board had requested my resignation, and that he also advised me and informed me that Colonel Prout had resigned. I made some protest about the matter, after being with them fifteen years, and Mr. Uptegraff said nothing, but that I would have to write out my resignation. So I told him if they did not want me to work for them, I would write out my resignation, and I did so. And then I asked for permission to talk to the members of the board and I went into the meeting to talk to them, and Colonel Prout very fairly, I thought, gave quite a talk to them about the unfairness, in his opinion of discharging me for matters which were entirely beyond my province.

Q. Have you anything further to suggest? A. Give me about a half a minute and I will talk a little further. May I smoke, please?

(Examination of witness suspended for a few moments.)

Q. Anything further, Mr. Johnson? A. Yes, sir. I would like to go on with my story to a finish, if I may, as long as I am here.

Chairman Thompson.— How much time will it take?

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Q. Proceed, Mr. Johnson. A. I left the employ of the Union Switch consequently, and within a week was in communication with Mr. Salmon. Mr. Salmon very kindly offered me the job in his company, after I had told him all the circumstances of leaving the Union Switch and Signal as vice-president, and in charge of sales; and he suggested, further, that he would put me on his board of directors, which he did, something which had not happened to me in the Union Switch and Signal Company. I was pretty much chagrined and cut up at being thrown out of the employ of the Union Switch and Signal Company after fifteen years of faithful service, and on the advice of a good friend of mine, I asked Mr. Salmon if I could not take the month of August off. Mr. Salmon very kindly said that I could, but that my salary would begin on the first day of August.

(At this point the witness had to leave the witness chair.)

A. I apologize for that little digression.

Chairman Thompson.—You do not have to apologize, sir. Does the smoke in here bother you?

Mr. Johnson.— No, sir. It was simply out of the appreciation of what Mr. Salmon did for me. The only thing I have to add to that is that I did not see Mr. Wood at any time or place, or have never seen him since the hearing was held in his office. I have never seen him and do not want to.

Q. Have you had any communication with him? A. No, sir, I have not.

Q. Written, telephonic, telegraphic or otherwise? A. No, sir.

Q. Either directly or indirectly? A. No, sir. That is all I know of the story, sir.

Chairman Thompson.— Is there something more that you wanted to say, Mr. Johnson?

Mr. Johnson.— There was something which I would like to testify to, which occurred prior to this. Because of the nature of leading up to the questions I was not able to bring on, but I do not think all the facts are testified to in this Kansas City, Clay County and St. Joe matter, and I think we ought to have all the

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facts. Mr. Banks introduced Mr. Wood to me in my office some six or seven months prior to his being made a Commissioner, as nearly as I can judge. It can be established easily enough by the correspondence in the office of the Union Switch and Signal Company, on the Kansas City, Clay County and St. Joe subject.

Chairman Thompson.— That contract was let on the 14th day of March?

Mr. Johnson.— The contract was let on the 14th day of March, but it had hung fire a long time. It had been under negotiation for a long time, and estimates had to be made up; the engineering plan of the signal had to be approved by the general manager of the railroad, as drawn by our engineer. Mr. Banks had this proposition and came into my office,— I mean Mr. Wood had this proposition, and came into my office introduced by Mr. Banks. Later I think I introduced Mr. Wood to Colonel Prout. Just when I don't know, but it was right at that time. Mr. Wood said that he had a proposition which he thought would interest the Union Switch and Signal Company, and I told him "That is all right; we are always glad to hear of anything coming along," and he said, well, he thought he was in a position to land us a good-sized contract on a project which he did not think we knew anything about, but that before disclosing what that contract was, where it was, and what it was, he would want to know what sort of a commission he could get out of it. Mr. Wood was introduced to me as president of the Northwestern Construction Company. I had never heard of Mr. Wood before. I knew Mr. Banks. Mr. Banks was a business acquaintance of mine for some years. He was never a friend of mine personally. He was a business acquaintance. I knew him because he was in the battery business for quite some years. I think at one time he was with the Gordon Battery Company, and the Signal Company buy a lot of batteries sometimes through their purchasing people. I told Mr. Wood that if he had a project which was something we knew nothing about, if it was a brand new proposition, and we were not already working on it, I thought individually our people would be glad to negotiate with him, but that was a matter I would have to report to the vice-president and general manager, Colonel Prout, but that I did not think there would be

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any trouble about it, because it was the ordinary commercial transaction. Well, Mr. Wood wanted to know whether we could not have a written contract on the matter. I told him I did not think we could, because on matters of that kind we never made written contracts. We were a reputable responsible concern, and if we agreed to pay him a commission on a job of that sort, he would get it. I did say this, however: If it was a proposition we were working on we would let him know at once, so he could be free to do as he saw fit. Well, he disclosed what he had and it was this Kansas City, Clay County & St. Joseph proposition, and we had not heard anything at all about it before, and did not know anything about it, and consequently we entered into an arrangement with Mr. Wood verbally, that we would pay him a commission. What that commission was, I don't know. It may have been four or five thousand dollars. I could not say offhand what it was now, but Mr. Wood got the general manager of the railroad on here, and Mr.— I can't think of his name — he is in Kansas City — general manager of this Kansas City, Clay County and St. Joseph line, and one day when I was absent, I think I was away on a contract somewhere, my immediate superior, Mr. George Blackmore, who was eastern manager and one of the engineers, went to see this general manager with Mr. Wood, as the matter was related to me afterwards.

Chairman Thompson.— Who is Blackmore?

Mr. Johnson.— Blackmore is now the general sales manager for the Union Switch and Signal Company.

Chairman Thompson.— Employed by them now?

Mr. Johnson.— Yes, sir.

Chairman Thompson.— Where does he live?

Mr. Johnson.— Demarest, New Jersey. He was not in their employ for about a year after I left. He left shortly after I did, but he is back in their employ now. But that meeting or that interview with the general manager was to discuss the plan which the engineers prepared, showing the signal system, to see whether it would meet their operating conditions, and after they had determined upon the system that they would find acceptable, the estimate

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was finished, and the bid was made. Some time after that the people financially behind or backing this Kansas City, Clay County and St. Joe enterprise, telephoned to me at my office to come over to the National City Bank, to see about this signalling proposition. I immediately telephoned to Mr. Wood, as it was a proposition he was handling, and Mr. Wood and our engineer, I think Mr. Griffin, went over with us, with me, and they sent for me to come into this private office, and there were present there two gentlemen. I forget their names, but they were interested in this company, and they went after me about the price — the price was too high, and they put the matter pretty strongly to me that we were in a pretty serious competition, and if we wanted that contract, we would have to materially reduce our figures, as nearly as I recollect such conversation. That was about what they were after, that I should cut the price, and they further wanted to know what Mr. Wood's connection with this matter was.

Chairman Thompson.— Who were the gentlemen present at that time?

Mr. Johnson.— I can't say offhand. I think there was a Mr. Eldridge.

Chairman Thompson.— What was he?

Mr. Johnson.— I think the interests Kidder-Peabody of Boston, that built this line. It was Kansas City, Clay County and St. Joe Electric High Speed Line.

Chairman Thompson.— Who were the other two gentlemen?

Mr. Johnson.— I couldn't say.

Chairman Thompson.— Don't remember their names?

Mr. Johnson.— No, I do not.

Chairman Thompson.— But they were all men connected with the Kansas City Road?

Mr. Johnson.— One of them was a lame gentleman, quite lame. I remember that. Now, the upshot of that was that I endeavored to get time on the matter to rehearse the figures and go over the same, which they gave me. They said they would leave it in the

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hands of the National City Bank representative to settle later, and then when we got outside, I told Mr. Wood of the conversation, and I further told Colonel Prout of the conversation, and he says, "It seems to me that Mr. Wood's representation on this thing is not going to do us a whole lot of good. I do not see where he gets in on this proposition to a very great extent. He apparently is not able to turn the contract over to us without a hard fight. The upshot of the whole thing was it simmered down to paying Mr. Wood fifteen hundred dollars. That was the amount that was agreed on with Colonel Prout that he should have. Right after Mr. Wood received his check for fifteen hundred dollars, he came into my office with five hundred dollars in cash, which he handed to me personally. That five hundred dollars in cash went through my cashier in the New York office to the treasurer in Swissvale that afternoon, which is all a matter of record, and which the cashier can verify.

Chairman Thompson.— What did Mr. Wood say when he brought that five hundred cash in?

Mr. Johnson.— He did not say very much. He said that was for me personally. I thanked him, and told him I would turn it in. That is all I know about that Kansas City, Clay County & St. Joe transaction. It was all prior to the time Mr. Wood was a Commissioner. I know that.

Q. You had previously written the officers for the check, had you? A. I had written the office for the check of fifteen hundred dollars, in accordance with Colonel Prout's instructions that was the amount of commission Mr. Wood was to receive.

Q. Had you advised Mr. Wood prior to the time you wrote that letter that was the amount that would be paid to him? A. Yes, and he said it would be satisfactory.

Chairman Thompson.— We will take a recess until half past two, and all witnesses are instructed to return at 2:30.

Mr. Lewis.— Before the recess is actually declared, I want to offer in evidence a check No. 23, of P. Erskine Wood, drawn on the Bank of America to the order of Lewis Cass Ledyard, Jr., for thirty-five hundred dollars, dated January 15, 1914. This check

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bears endorsement, "Pay to to the order of the Metropolitan Trust Company at the City of New York. Lewis Cass Ledyard, Jr." Rubber stamp endorsement, "Received payment through New York Clearing House, January 15, 1914, endorsements guaranteed. Metropolitan Trust Company, George N. Hartman, Treasurer. No. 107."

AFTERNOON SESSION

4:10 o'clock P. M.

Chairman Thompson presiding.

SIDNEY G. JOHNSON, being recalled for further examination, testified as follows:

Chairman Thompson.— I will state for the record that in view of the fact of the testimony taken by this Committee this morning and yesterday morning affecting certain acts of Public Service Commissioner Wood, I have notified the District Attorney of this County at the taking of the recess of the facts, and he has asked for a copy of the minutes which are being prepared and will be given him this afternoon. Of course we have no jurisdiction as a Committee to try persons accused of any crime. That is the province of the District Attorney. I have advised the District Attorney that this Committee and the organization and its records are subject to his convenience and his demand.

By Mr. Lewis:

Q. Mr. Johnson, I think you told us of seeing Mr. Wood on at least two occasions this morning, and I am not sure that you told of any other meeting in your testimony this morning; will you tell us now how many times you met Mr. Wood between the time that the proposal of the Union Switch and Signal Company was presented and the time that you last met him at the formal hearing? A. Why, I can't remember the exact number of times, Mr. Lewis.

Q. Were there more than two occasions? A. The first time was in his office at the Park Row building, and the second time was there at this Exchange place office, as I recall it. Whether I met him again before the Exchange place office meeting or not I do not

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recall, but I saw him subsequently at the Commission office. I don't know just how many times. Possibly twice more.

Q. Will you tell us what led up to your going to the office of Mr. Wood in the Exchange place building; did he ask it personally or telephone you? A. I think he telephoned me. I think he made an appointment for me to go there. Just how he did it I don't recall offhand. I had a good many appointments and things to keep track of. I know that he gave me the place to go to.

Q. And gave you the room number? A. I don't know about that. He gave me the floor and the firm to go to.

Q. Did he give it to you personally by word of mouth or over the telephone? A. I don't recall.

Q. Have you any recollection on the subject at all? A. Not that I can state positively.

Q. Did he ever telephone to you at your office? A. I think he did.

Q. After he became a Commissioner? A. I think so.

Q. More than once? A. I don't know about the number of times.

Q. Did he telephone to you several times? A. I don't know how many times. I know he gave me the telephone number that would reach him at the Tribune Building. I think he gave me the telephone number that would reach him at the Public Service Commission office.

Chairman Thompson.— His private telephone?

Mr. Johnson.— I don't know whether a private telephone or not.

Chairman Thompson.— Have you a record of that?

Mr. Johnson.— I have not.

Chairman Thompson.— Do you know what the number was?

Mr. Johnson.— I don't recall the number, no, sir.

Senator Lawson.— When you phoned him did you get Commissioner Wood immediately or a subordinate?

Mr. Johnson.— I don't know. I think my switchboard operator would get the call through for me.

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Chairman Thompson.— The telephone record will show that anyway.

Mr. Johnson.— Yes, sir. I don't know which way the calls would go, he call me, or I him.

Q. Isn't it a matter of fact sometimes he called you? A. Sometimes.

Q. And sometimes you him? A. Yes, sir, I think so.

Q. On this occasion that you met him at 43 Exchange place, did you meet him at the Tribune Building or Commission's office and go to Exchange place? A. My recollection is I met him there, and he was already there at Exchange place.

Q. Will you describe the office, the interior of the office? A. The interior of the office, as I recollect it, it was a curious room with some stuff packed up, and there was a desk of some sort, and a young man in there who Mr. Wood asked to leave the office to him.

Q. Can you describe the young man that was there? A. No, sir.

Q. Have you any impression now as to how old he may have been? A. No, sir.

Q. Was he a boy? A. No, sir. I think he was a medium aged man.

Chairman Thompson.— Do you mean twenty or twenty-five years of age.

Mr. Johnson.—I should think so.

Senator Lawson.— Was he introduced to you?

Mr. Johnson.— I don't recall.

Senator Lawson.— What did Mr. Wood say to him?

Mr. Johnson.— That he wanted to use the office to talk to me, and he got out.

Senator Lawson.— Did you sit down?

Mr. Johnson.— Yes, sir.

Senator Lawson.— At a desk?

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Mr. Johnson.— I think there was a desk there; I don't know for sure. I think, as I recall it, there was a desk against this right hand side, and the furniture stacked up on the left; I haven't a very clear recollection of it, no.

Q. You knew he was a Public Service Commissioner at the time you went to this office with him? A. Yes, sir.

Q. Had you ever met him outside of the office of the Commission, except when you were dealing with him on the Kansas City matter? A. No, sir, only at this Exchange place office.

Q. And how many times would you suppose you may have met him all told in connection with this contract? A. After he was a Commissioner or before?

Q. After he was a Commissioner? A. Oh, I should think half a dozen times would cover it, all together, counting the informal meetings in his office with the lawyers.

Q. Did you ever meet him and go to lunch with him? A. No, sir; I don't think so. I had lunch with him during the Kansas City and St. Joseph matter, I think very early, and I think he invited me to the Whitehall Club.

Q. That was in the Kansas City matter? A. Yes, sir; very shortly after I knew him, as I recall it.

Q. Did you ever have lunch with him when he was a Public Service Commissioner? A. I don't recall that I did.

Q. Did you ever meet him uptown any place? A. No, sir.

Q. Did he ever come to your office at the Church street building after he was a Public Service Commissioner? A. I don't believe he did. I am pretty sure he did not.

Senator Lawson.— He came there before he was a Commissioner?

Mr. Johnson.— Yes, sir.

Senator Lawson.— And he telephoned you after he was a Commissioner?

Mr. Johnson.— Yes, sir.

Q. Did you meet him in his room at the Tribune Building, the room he occupies as his office? A. Yes, sir, in his office.

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Q. And was there anyone else present at any time when you were there, except at two hearings? A. I don't recall that there was. I think there was gentlemen came in and out there.

Q. There were occasions you saw him at his office, other than those two hearing dates? A. Yes, sir.

Q. And then you saw him in his private office? A. Yes, sir.

Q. Did you see Mr. Whitney, the Secretary of the Commission, around there? A. I don't recall seeing him there at all.

Q. Do you know Mr. Whitney? A. I met Mr. Whitney some little time back, the night he made a speech at the Interborough dinner at Coney Island. I went across the street after dinner, with ten or twelve gentlemen, and we sat at a table in that restaurant there, Reisenweber's, I think it is, and I was introduced to him and shook hands with him.

Q. Have you met him since? A. No, sir, I haven't met Mr. Whitney since.

Q. And did you not see him about the building when you were there to see Wood? A. If I did, I didn't know who he was.

Q. Do you recall meeting anyone else there when you called upon Mr. Wood? A. Mr. Wood's assistant or secretary there, he would announce me there.

Q. Do you know his name? A. I don't recall his name.

Q. He knew you, of course? A. Yes, sir. He was a young fellow. I know him by sight.

Chairman Thompson.— Is that the one that comes here frequently, or is that the one that is sick, that secretary?

Mr. Johnson.— I saw the young gentleman that I saw over there, in here this morning somewhere.

Senator Lawson.— You saw the young man here this morning?

Mr. Johnson.— Yes, sir.

Q. Have you any recollection of what hour of the day it was when you went to Exchange place? A. I don't recall whether before lunch or after. I know the curb brokers were out in the street and I walked through the crowd, and it was in their business hours.

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Q. Have you any way of determining in your mind where you were when the arrangement was made? A. I have not, no, sir.

Q. You have no recollection? A. No, sir.

Q. When you left the office, where did you go then? A. I think, if I recall it correctly, Mr. Wood left with me, and we walked over to Broadway together.

Q. Was there any discussion on the way up about his proposition? A. I don't think there was. I think the thing was dropped entirely.

Q. Do you recall anything else that you talked about during the ten or fifteen minutes that you were there? A. No, sir.

Q. Did Wood say anything about the character of the place, or make any apologies for its condition? A. I think he did say something about the cluttered-up condition of the office, and it was a temporary office, or something of that kind.

Q. Did he give any reason for asking you to meet him at that particular place? A. No, sir.

Q. Nothing said on the subject? A. No, sir.

Q. You don't remember the number of the office? A. No, sir.

Q. Do you remember what floor it was on? A. No, sir; I don't know whether the third or the fourth floor. He took the elevator, and I think there was a name, a firm name, on the door, of some sort.

Q. Would you know it if you were to hear it? A. I might.

Q. Was it the firm of Havemeyer & Wood? A. I think Havemeyer was on the door. I am not sure as to that. That sounds familiar.

Q. You think Havemeyer's name was there? A. That name sounds familiar. I wouldn't swear to it unless I could see the door again.

Q. Was there anything said on your way back about the Center street loop construction work to be done, and about the contract? A. No, sir; I don't think there was. We might have reiterated the patent situation. I might have talked on that, because I had talked to him about that, and still dwelling on that phase of the situation.

Q. Did he show familiarity with that patent situation? A. He asked me a great many questions about it, and about what we had to offer, and about our system.

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Q. Did he show a technical knowledge of the conditions? A. I can't say that he did. I had to go into details pretty carefully with him. I made a little sketch on one or two occasions of the way our system worked.

Q. From time to time in talking with you on the subject, did he impress you as having a knowledge of the details of the proposed plan or proposed installation which was intelligent? A. Well, I don't know.

Q. Were his questions apparently bona fide questions? A. Yes, sir, the questions were, and in some way I got this sort of an inference, but I wasn't quite sure what he wanted all of this detailed information for, whether he wanted to give it to our competitors or what he wanted of it.

Q. Were his questions such as seemed to be such as might be wanted to get information from you for the benefit of some one else? A. Some of them were, and he wanted me to describe in detail everything we were offering, and our licenses under the alternating current lock system.

Q. Did he make any memoranda of what you said to him? A. He might; I don't recall that he did. I recall making little demonstrating sketches myself for him.

Q. Did you leave those to him? A. I don't know whether I left them there or threw them in the waste basket or what I did with them.

Q. Did Mr. Wood tell you, Mr. Johnson, in any of the conversations that you had with him on the subject of the Center street loop, that there was to be a larger contract later on? A. I don't recall that he did.

Q. Did you know that there was to be? A. I knew there was to be one later on.

Q. Did you get any information from him on that subject? A. No, sir; the matter wasn't up, and the specifications were not out, and the inquiry was not out for it.

Q. Did you ever talk with Mr. Wood on the subject of the subsequent or larger installation that was to be made later? A. I don't recall that I did.

Q. Did he suggest to you that you ought to get this contract, as it would be advantageous in the effort to get the larger contract later? A. I couldn't say that he did. He might have.

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Q. Have you any recollection about it? A. I have not, no, sir. I was not very much interested in that larger contract, because no specifications were out for it, and wasn't even an inquiry on it.

Q. You were interested to the extent you hoped there might be an opportunity to bid on a proposition of that sort, were you not? A. Yes, sir. The matter was to come up later.

Q. You knew it was to come up? A. Yes, sir.

Q. And did it occur to you that if you could get the Center street contract, it would be helpful to you, that is, you would have a better strategic position for securing the work on the Fourth Avenue line? A. I don't know that we would, and I don't know that I would get that deduction, because the New York Municipal Railway people were letting the contract, and I don't think it made very much difference to them who had the first contract. They would let the contract to the parties they saw fit on price, I took it, on the next contract.

Q. You are quite sure there was nothing said by Wood on that proposition? A. Nothing that I can recall.

Q. Were you in the employ of the General Company at the time the inquiries were out for the Fourth Avenue proposition? A. Yes, sir.

Q. What did you have to do with that matter? A. I had nothing at all to do with that matter.

Q. When did you first learn of the fact that the General Company had been asked to bid upon that work? A. The whole staff knew that we were figuring on the work.

Q. When did they know that? A. That would be — I was away all August, and I went back there in September, and I think when I went back — when I went to take hold of my new work, that they were then figuring on the matter.

Q. That was the 1st of September? A. Yes, sir, that was the 1st of September, as I remember it.

Q. Did you participate in any way in making up the figures for that contract? A. No, sir, not anything to do with the estimate. I did attend a conference which Mr. Salmon himself held about rounding up the estimates, and about what figures would be put in on the bid.

Q. By your company? A. Yes, sir, by the General Company. The estimating engineers were present, and the chief engineer.

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Q. Where was that conference held? A. At the Waldorf.

Q. When did that conference occur? A. Right before the bids were made; just, not far from that. I don't know, but I assume Mr. Salmon was determining on the figure to put in.

Q. Who was present at that conference? A. Our estimating people from Rochester, one or two of the engineers there, that did the estimating, and I think Phillips, and Mr. S. N. White, I am not sure whether he was there or not, but I think he was.

Q. Both of Rochester? A. Yes, sir, and Mr. Werpel, assistant to our president, and Mr. Salmon, and Mr. Howe, our chief engineer and myself.

Q. Was there any discussion there at that time of what the probable bids of other companies might be? A. Yes, sir; there was.

Q. Will you tell us what occurred upon that subject? A. Mr. Salmon, as near as I can recall, was mulling over in his own mind what price he would put in on this whole bid, and asked me where I thought the Union people would be.

Q. I suppose the meaning of that would be, what amount they would bid? A. Yes, sir; what price they would bid, and I told him we ought to run over the various items in the proposition, and I was not at all familiar with it, and would like to go over it pretty carefully, and we went over it, and compared the items about on a functional basis of what we figured the Union people might put in, and I assumed the Union Company would make as low a price as they possibly could go, because it was a very large contract, and I thought their figure would be about a million and five hundred thousand dollars. Mr. Salmon said he did not think the figure would be that low, and he thought he ought to put in a figure of about a million and eight hundred thousand dollars, something of that nature.

Q. And he expected that would be below the Union? A. I think he did, because, as I recall it, I told him I thought the Union bid would be a lot nearer one million five hundred thousand dollars than one million eight hundred thousand dollars, and he bet me a box of golf balls it would not.

Q. Did you bet with him? A. Yes, sir.

Q. What else did you have to do with the preparation of that proposal or bid? A. I didn't have any of the details to do with it

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at all. The matter was written up by our people and handled by Mr. Salmon himself, and I didn't have anything to do with it.

Q. Were you present when the bid was presented? A. No, sir.

Q. Or opened? A. No, sir.

Q. Or present when the matter was under discussion by the Public Service Commission? A. No, sir; I had nothing to do with those negotiations.

Q. Did you meet the engineer of the Municipal Railway Company at any time? A. I met Mr. Menden on telephone call from Mr. Salmon, as I recall it, to see if we couldn't get the time extended two weeks for the opening of the bids.

Q. Where was this call from? A. I think Mr. Salmon wrote me or called me up from Rochester. Mr. Briney, I think, was away on a business trip at that time, and Mr. Salmon wanted to know if I knew Mr. Menden, and I said yes, I had done business with him, and he wanted to find out if we couldn't get a two-weeks' extension, I think it was, and I went to see Mr. Menden, but I was not successful. He was very nice, and refused to give the two weeks extra time.

Q. Did you report that back to Mr. Salmon? A. Yes, sir.

Q. When did you ever see Mr. Menden again on the subject? A. I don't think I ever did.

Q. Did you ever see him since? A. Yes, sir.

Q. Were you present at the time the contract was formally approved by the Public Service Commission? A. No, sir; I wasn't.

Q. Did you see Mr. Salmon the day he was here in connection with the approval of the matter by the Public Service Commission? A. I don't recall that I did at all.

By Chairman Thompson:

Q. What was the real bid of the Union, do you remember? A. I think it was between one million five hundred thousand dollars and one million six hundred thousand dollars, somewhere.

Q. And you got the golf balls? A. I won the bet.

Q. What salary did the Union people pay you when you worked for them, what was your salary? A. Have I got to answer that question? Is that a fair proposition?

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Q. I am going to ask it of you; of course I will probably prove it some other way if you do not answer it. A. Fifteen thousand dollars a year.

Q. And what salary do you draw at present? A. Fifteen thousand dollars a year, but under a different arrangement, and if we do an excess of a certain amount of business, I am to get a low percentage commission.

Q. That is, that is your contract now? A. Yes, sir.

Q. Have you a contract that extends for a specific length of time? A. Yes, sir. I don't just —

Q. You have a contract for a certain time that has not yet expired? A. Yes, sir; I have.

Q. Is that gentleman behind you — do you recognize him? A. Yes, sir.

Q. That is the gentleman that is in Mr. Wood's office? A. Yes, sir.

JAMES P. ARCHIBALD, being first duly sworn, testified as follows:

Examined by Mr. Lewis:

Q. Did you ever meet Mr. Johnson before to-day? A. Yes, sir, I met him in the office of the Public Service Commission on a visit with the Commissioner, I believe.

Q. When? A. Some time when, I don't know the exact time.

Q. This year or last year? A. I wouldn't say whether this year or last year. I met him once or twice. I wouldn't swear to more than once or twice at the most.

Q. Did you know his name? A. He sent in a card that carried the name of Johnson.

Q. For whom did he inquire when he called? A. Commissioner Wood.

Q. And did you show him into Commissioner Wood's office? A. I don't remember whether Commissioner Wood was there or not.

Q. How many times did you see him? A. As I say, I wouldn't say it was more than — I remember seeing him once.

Q. Only once? A. I would swear to only once. It may have been more than that, but I don't remember of only once.

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Q. Why are you so positive of once? A. I only remember of the one occasion.

Q. Didn't he come there frequently? A. I wouldn't say he came there frequently. If he came frequently I would recollect more than once.

Q. Haven't you a recollection of seeing him there several times? A. No, sir.

Q. Did you see him at the hearing? A. No, sir. I didn't attend the hearing.

Q. Did you see Commissioner Wood in his office with Mr. Johnson and with various engineers discussing plans or specifications or blueprints or anything of that sort? A. No, sir, I wasn't in the office when any such meeting took place.

Q. Do you remember an occasion when they were discussing those plans and specifications in Commissioner Wood's office in relation to the Center street loop? A. No, sir, I don't.

Q. Just tell us what your duties are there, Mr. Archibald? A. Secretarial duties, and attend to people that might come in for information about transit matters in the Bronx, in the absence of the Commissioner, and take care of his files and his calendar.

Q. Where is your home? A. 171st street in the Bronx.

Q. You have known Commissioner Wood for a good while? A. I know him personally and in personal contact with him since he has been Commissioner, and previous to that know him from being around in the Bronx in a general way.

Q. Are you related to him? A. No, sir.

Q. How long have you known him? A. I couldn't say how long I knew him. I wasn't acquainted with him. I just knew of him.

Q. Would you mind telling us how you happened to be appointed secretary? A. I read of his consideration for appointment, and I made application to him and offered references as to my ability and character.

Chairman Thompson.—Application to who?

Mr. Archibald.— Commissioner Wood.

Q. After his appointment or before? A. It was before he took office and after his appointment.

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Q. Did you have any letters of introduction to him from any one? A. No, sir, but letters of reference to him and letters of character and ability.

Q. From whom were those letters? A. Then Commissioner Frothingham, now City Magistrate, and on that letter was a statement by Borough President Marks, and also a letter from Doctor John Finley, President of the New York State University.

Q. Any others? A. No, sir.

Q. Do you remember when it was with reference to the time Commissioner Wood was appointed that you first saw Mr. Johnson? A. No, sir, I don't.

Q. Wasn't it soon after you took office as secretary? A. I couldn't say positively. I just have that recollection of him coming in once, and I think I met him half way down the hall.

Q. What did he say to you? A. I don't remember just what happened between us. It was a matter of going up and meeting the gentleman and letting him know if the Commissioner was in or would see him.

Q. Did you ever telephone to Mr. Johnson at Commissioner Wood's suggestion? A. No, sir.

Q. Were you ever present when Commissioner Wood telephoned to Mr. Johnson? A. No, sir.

Q. Did you ever receive any calls from Mr. Johnson over the telephone for Mr. Wood? A. No, sir, never spoke to Mr. Johnson over the telephone or on any other occasion, except as he came in at that time as I remember it. I never saw him in any other place but the office of the Commission.

Senator Lawson.— Have you ever been down to 23 Exchange place?

Mr. Archibald.— No, sir. I have been in 43 Exchange place, where I saw the Commissioner regarding the appointment of myself as secretary.

Senator Lawson.— That was his office at the time, 43 Exchange place, was it?

Mr. Archibald.— I believe he has an office there.

Q. Do you remember the room number? A. No, sir.

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Q. What floor was it on? A. I don't remember. I was never there since I was appointed, and never had occasion to go there.

Chairman Thompson.— What was the name on the door?

Mr. Archibald.— I really don't remember what name was on the door, or if there was a name on the door.

Chairman Thompson.— Can you describe the office inside?

Mr. Archibald.— Yes, sir. There was one room and a partition extended about three-quarters along the length of the room, and left a little anteroom in front, as I remember, and Commissioner Wood was on the right-hand side of the partition as you went in.

Chairman Thompson.— When you went there was there furniture stored there?

Mr. Archibald.— I was only on the one side. Commissioner Wood had a desk and table, and a lot of papers. I don't know what they were.

Chairman Thompson.— Was there any one else in the office?

Mr. Archibald.— There was a young fellow there.

Chairman Thompson.— How old a man?

Mr. Archibald.— I don't know, maybe twenty-two or twenty-three, or maybe twenty-five.

Senator Lawson.— Do you know his name?

Mr. Archibald.— No, sir.

Senator Lawson.— Had you ever seen him before?

Mr. Archibald.— No, sir.

Q. Had you ever seen him before? A. No, sir.

Senator Lawson.— Ever seen him since?

Mr. Archibald.— Yes, sir.

Senator Lawson.— Where have you seen him?

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Mr. Archibald.— Been up to see the Commissioner, perhaps about things in his own office.

Senator Lawson.—And you have not discovered his name?

Mr. Archibald.— I don't recollect it.

Senator Lawson.— Hasn't he given the name?

Mr. Archibald.— He might have come in when I wasn't there, and if he was accustomed to come there a lot, might be let in without a card. I don't remember his name. I know him, but I can't remember his name. The man was employed by Commissioner Wood before he took office — before he took office as Public Service Commissioner.

Senator Lawson.— Does this young man live in the Bronx, too?

Mr. Archibald.— I don't know; I don't think so.

Q. Could you go back to your office and get the young man's name? A. I would have to wait until I could see the Commissioner.

Q. Is the Commissioner at his office now? A. I don't think he is.

Q. Is he employed there now? A. I don't know.

Q. Is one of those boys named John? A. No, sir; Albert.

Q. What is the last name? A. I don't know. I can get it as soon as I can see Commissioner Wood.

Q. It was Albert was at the office, you think? A. Yes, sir; but I cannot think of his last name now. I can get it for you if you want it.

Chairman Thompson.— I haven't any doubt but what the witnesses will love to stay here and all be glad to come back to-morrow, so, at the unanimous request of the witnesses, I direct them all to appear to-morrow morning at 11 o'clock.

We will suspend now until to-morrow morning at 11 o'clock.

(Whereupon, at 5:20 o'clock P. M., an adjournment was taken to Friday, December 17, 1915, at 11 o'clock A. M. at the same place.)

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DECEMBER 17, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Pursuant to adjournment taken from Thursday, a quorum of the Committee being present.

Senator Towner, acting as Chairman, called the Committee to order.

Mr. Lewis.— Is Mr. Levinson in the room?

At this time Senator Thompson resumes the Chairmanship.

SALMON O. LEVINSON, being duly sworn, testified as follows:

Examination by Mr. Lewis:

Q. Mr. Levinson, your home is at Chicago? A. It is.

Q. What is your business? A. Attorney.

Q. And are you the attorney for the Union Switch and Signal Company of Swissvale? A. Yes, sir.

Q. And how long have you been? A. Well, for, I should say, off and on, in one capacity or another, about three years. I will perhaps be able to explain and make that answer clear. I was for several years counsel for Mr. Westinghouse, who was president of the company, and the company had very little need for counsel, except in their patent litigation and things of that sort.

Q. Were you present at a meeting of the board of directors of that company held at Swissvale on the 15th of July, 1914? A. I was.

Q. Will you tell us who else was present? A. Mr. Rodd, Mr. McCune, Mr. Uptegraff, Mr. Rosenwald, Mr. Prout — Colonel Prout, as directors; and I don't know whether your question is technical, a board meeting.

Q. What I cared for — A. At the meeting held that day — Mr. Sidney J. Johnson and Mr. Siemon.

Q. Sidney G., isn't it? A. Is it G.?

Q. And Mr. Siemon in what capacity? A. Treasurer of the company, and I was there. I left myself out.

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Q. Will you tell us what occurred at that meeting in connection with the Center street loop contract, if anything? A. The question came up — we had known about it for a few days — as to the payment of five thousand dollars asked by Colonel Prout and Mr. Johnson to be paid, as I understood it, by Mr. Johnson to Mr. Wood, of the Public Service Commission, for or in consideration of Mr. Wood securing this Center street loop contract for the Union Switch and Signal Company.

Q. Was it for securing or in consideration of his influence or efforts to secure? A. Well, it seemed to be taken for granted that he could land the contract. I don't know whether it would include his influence. It certainly meant his vote, and as we understood it, the acquisition of the contract.

Q. Now just tell us what was said and done there in that connection, if you will? A. The question arose before the board by reason of the refusal of Mr. Uptegraff to sign or countersign any check or voucher in connection with such a transaction. Colonel Prout and Mr. Johnson had brought the matter up to Mr. Uptegraff, who had recently become since the death of Mr. Westinghouse, in March, 1914, vice-president in charge of finances, and had requested him to agree to issue such check, and let them pay Mr. Wood five thousand dollars. Mr. Uptegraff refused flatly and he and I had a talk about it, and he arranged with Mr. Siemon, the treasurer, that he would not allow any check or voucher of that kind to go without Mr. Uptegraff's signature, the fear being that they might be able, themselves being officials, to execute such a check or voucher. And that matter was, at the request of Colonel Prout and Mr. Johnson, brought up before the board, and, as I say —

Chairman Thompson.— You say that was brought up at the request of Colonel Prout and Mr. Johnson? A. Yes, sir. Colonel Prout called the meeting.

Chairman Thompson.—As president?

Mr. Levinson.—As president. They were pressing because time was passing and their promise was overdue. They had agreed to pay this money before. They were in default. Their word was out for the money, and they wanted to make their word good.

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Chairman Thompson.— But they had promised to pay it?

Mr. Levinson.— Yes, they had promised to pay it. I understood the promise was made by Mr. Johnson, but the whole transaction was fathered and approved by Colonel Prout, and they were both pressing for the immediate payment. They did not want to lose the contract, and they wanted to make their word good.

Chairman Thompson.— You are sure the meeting was not called by Mr. Uptegraff?

Mr. Levinson.— The meeting was called by Colonel Prout.

By Mr. Lewis (resuming):

Q. Do you know whether it was at Mr. Uptegraff's request? A. I remember this: Mr. Uptegraff said, "You will never get me to sign any such paper, check or voucher, and you will have to take it up with the board if you want to carry on such a transaction as that." As a matter of fact, if you want to know, the day before we met I had a talk with some of the directors, the ones we could get, and we had made up our minds that if this transaction was what it appeared to be, and they said so, we would discharge them on the spot. That was had before the meeting.

Q. Had the check been drawn? A. Oh, I did not understand that any check or voucher had been drawn at all. I stated to them, and I was impressed it was sort of a strange proceeding, that they seemed to think more of making their word good than they did of the heinousness of bribing a public official. They insisted because they wanted to make their word good.

Q. Who said that? A. Prout and Johnson. They were both there at the meeting.

Q. Well, what else occurred, if anything? A. Well, that was really the crux of the matter. Both begged pretty hard not to be discharged. They wanted a little time. Some of the directors were in Europe. They asked to have it put off two or three weeks; did not want any action taken, and they were told that that kind of work would not be tolerated, and that they could not stay in the company another day; if they did not resign, they would be ousted on the spot.

Q. Was Mr. Johnson present in the meeting during the discussion? A. He was present at two of the meetings, and he was

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present at the little committee meeting consisting of Mr. Rodd, Mr. Rosenwald and Mr. McCune, and I was present as counsel.

Q. Was that the only meeting held before a resignation was presented or after? A. We had meetings all day from about 10 o'clock in the morning until about 4 o'clock, and we were all the afternoon getting them to resign, and finally about four or half-past four, I think it was, Mr. McCune said, "If you do not resign in a minute, I shall make a motion to oust you, and I won't give you any more time than that," and the resignations came along, Prout's first and Johnson's after, as I recall it.

Q. Just what, if you are able to state, did either of them say on the subject of their conferences with Commissioner Wood, and Wood's statements to them? A. I don't recall anything concrete. Senator, the issue was so clean-cut, and it had been developing for some two or three weeks, and we knew what they wanted, and we knew about what we were going to do, and we were not in any particular mood to go into details. The transaction was on an agreement or effort to bribe a public official, and we did not descend to much details.

Q. Do you remember anything that Mr. Johnson said on the subject of his negotiations with Mr. Wood, Commissioner Wood? A. Nothing except that he had agreed to pay it, that his agreement was overdue, and that he wanted to make good on his promise to pay him the money.

Q. That was Johnson's promise, not Prout's, I assume? A. Johnson's promise, but the Colonel knew all about it, and had co-operated with Johnson in this dealing with Wood.

Q. Well, did you understand that Prout had ever seen Commissioner Wood in connection with the matter? A. My impression was that the negotiations were conducted by Johnson personally, but that Colonel Prout knew all about it concurrently.

Q. Did Mr. Johnson tell you any of the details of the conversation that he had had with Wood, as to where it took place or when it had occurred? A. I don't recall anything of the sort, and I don't think I knew until I read Johnson's testimony in the newspapers.

Q. Had you at the time any knowledge of the fact that Commissioner Wood, prior to his appointment as a Public Service Commissioner, had rendered some services to the Union Switch and

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Signal Company in connection with the contract with the Kansas City, Clay County and St. Joseph Railroad? A. Well, either I did not know anything about that, or it made absolutely no impression on my mind. I did not remember the name, and did not have it associated with the name Wood, or a Public Service Commissioner.

Q. Had you, as a matter of fact, any knowledge of such employment of Mr. Wood? A. Not at all. I had never had anything active to do with the Union Switch and Signal Company. I am, I guess, one of the largest stockholders, but nothing to do with the business at all.

Q. Do you know Mr. Salmon, of the General Railway Signal Company? A. Yes, sir.

Q. How long have you known him? A. I should say about a year and a half.

Q. Did you meet him at or about the time or shortly after this board meeting at Swissvale? A. July 15th. I met Mr. Salmon at the Vanderbilt Hotel; I think it was in August of that year. I am not absolutely sure, but my best recollection is it was in August. At all events, it was within a very few weeks after this transaction.

Q. Did you discuss this matter with Mr. Salmon in any way? A. I had a little talk with him about it.

Q. Do you mind telling us what the conversation was? A. Why, I suppose I haven't any objection particularly. I had never met Mr. Salmon nor any of the officials of the General Railway Signal Company, and I think he had an engagement with Mr. Uptegraff, or with Mr. Uptegraff and Mr. Siemon, at the Vanderbilt Hotel. I am in New York a great deal, and I happened to be there then, but not for this engagement or anything connected with it. And Mr. Uptegraff asked me whether I would like to meet Mr. Salmon, and I said I would, and I did meet him up in the private suite at the Vanderbilt Hotel.

(At this time a flashlight was taken.)

Q. Now, you are famous. A. It reminds me of what I said to a newspaper reporter, but I don't want it taken down, so I better not say it. Among other things, confining it to what was said

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about this matter, I said, "Mr. Salmon, I understand your company has taken over Mr. Sidney Johnson." He said, "Yes." "Well, have you made him an official of the company?" He said, "Yes." I said, "What?" He said, "Vice-president," I think he said, "Vice-president in charge of sales." "Well," I said, "have you made him a director?" He said, "Yes, made him a director." I said, "Do you know the circumstances under which he was let out of our company?" He said, "Yes, I know all about it." "Well," I said, "do you know that he attempted or agreed to bribe a public official, one of the Public Service Commissioners of New York State?" He said, "Yes, I know all about it, and know all the circumstances, and all the facts." I said, "Don't you think that is sort of an outrageous thing to do, to take a man that ought to be in the penitentiary and make him vice-president of your company and director? That is a much more dignified position than he had with our company. He was not a director of our company." Mr. Salmon said, "I remember," and he said, "Our methods are entirely Puritanical, and we can control him as we do everybody else." "Well," I said, "they would have to be pretty Puritanical to justify taking a man over not as an employee but as a high official, next highest to yours." And I said, "We do not like it, and I think it is an outrage," and then I think we drifted off into something else.

Q. And that was about all that was said on that subject? A. That is about the substance of it. It may have been a little amplified. Of course I was just a little or quite a little indignant.

Q. Do you mean you have amplified the testimony? A. We may have had a little more elaborate talk on the subject, but the essence of it is there.

Examination by Chairman Thompson:

Q. You say you felt very indignant over it? A. Over his employing a man and knowing that he was a — well, a thief, as I regarded it.

Q. Did you in that conversation ask Mr. Salmon what he was going to use Johnson for? A. Yes. He was vice-president in charge of sales.

Q. But did you ask him what he was going to have Mr. Johnson do in regard to his company? A. I knew what that meant, as

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vice-president and in charge of sales. We did discuss it. He had charge of getting contracts for the General Signal Company.

Q. What did that mean? A. That meant getting contracts and getting work, such as the B. R. T. which followed. I knew that as president in charge of sales he would have charge of their contracts, of getting their business, of selling their signal apparatus.

Q. Well, did you know, do you mean to indicate from that they were to use him for the same purpose for which you had discharged him? A. Well, I think to an honest man, the inference would be irresistible. They were giving him the same title that he had with our company, and therefore it is to be assumed he would do similar work, whatever he could do.

Q. Now, in that conversation, did you ask Mr. Salmon the direct question as to whether he was to be used for that? A. No, I think not. I don't remember that. It was so obvious. His conversation was perfectly clear, and he knew what I meant, that we had sufficiently called a spade a spade for the purposes of the conversation.

Q. Well, now, you say he got contracts afterwards. What contract did you have in mind? A. I say shortly after the General Railway Signal got this large contract down here. It is commonly called the B. R. T. contract, or —

Q. Or Fourth Avenue contract? A. The Fourth Avenue.

Q. Was that gotten through Johnson? A. I don't know. I am not active in those matters. I just heard that these bids were up and there was a difference in the board, in the Commission, and that Mr. Wood had favored the General Railway Signal Company.

Q. Well, at the time you had this talk with Mr. Salmon, you knew that this Fourth Avenue contract was coming along, anyway, didn't you? A. Well, I don't recall about that. You see, I was up in Maine for the summer, and I never had anything to do with contracts for the Union Switch and Signal, but it might have been so. I do not mean to say it was not so.

Q. Well, what did you know about the B. R. T. contract? A. Why, it was August, September, October. It was a matter of great discussion every time I was at Pittsburgh, or ever met any of the officials. It was one of the largest contracts, I believe, that has ever been let.

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Q. For signals? A. Yes, sir, that is what I heard. I am not posing as knowing anything about this business. I was never active in any respect in matters of this character.

Q. Well, would it be possible from what you know of the operation of these signal companies, would it be possible for a company to get a contract like that without some knowledge on the part of the vice-president in charge of sales? A. I think he would be the most prominent man. That is what he claimed to be with us when he was vice-president in charge of sales with our company, and that is what he was doing with this Center street loop in that capacity.

Q. May I ask another question? I assume you have a Public Service Commission in your State? A. We have.

Q. Can you conceive of any real good reason why a Public Service Commissioner in these matters, in order to get what information, engineering information, which would be necessary for him to act intelligently, would need to call in private consultation the salesman of the company? A. Why, I think one of the more active officials of the company could give him a better technical answer. That is to say, how far a salesman is a technical man or engineer, I imagine would depend on the individual person. Some would be quite highly competent as engineers, and others would not be, but the thing would sort of dovetail in, and so I would not feel competent to answer that, Senator, with any degree of intelligence.

Q. Mr. Levinson, can you be here to-morrow? A. Well, I would like to leave to-morrow afternoon; I do not mind being here in the morning. It is holiday time.

Q. This is the nicest city to do holiday shopping. A. I am here so much, the city has lost a lot of its charm.

Chairman Thompson.— You can go out and shop in the morning until 11 o'clock, but I would like you here at 11 o'clock.

Mr. Levinson.—All right.

Chairman Thompson.— The Committee will take a recess until 2:30 P. M.

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AFTERNOON SESSION

Chairman Thompson presiding.

JOHN R. MCCUNE, being first duly sworn, testified as follows:

Examined by Mr. Lewis:

Q. Mr. McCune, you are a resident of Pittsburgh? A. Yes, sir.

Q. What is your business? A. President of the Union National Bank.

Q. You are also a director of the Union Switch and Signal Company? A. Yes, sir, since March, 1913.

Q. Were you in attendance at a meeting of the board of directors of that company held about the 15th of July, 1914? A. Yes, sir.

Q. Will you tell us who were present? A. Colonel Prout, Mr. Uptegraff, Mr. Levinson, Mr. Rodd, Mr. Rosenwald and myself.

Q. Mr. Sidney Johnson there? A. He was invited in after the meeting was called to order.

Q. Will you tell us what took place at that meeting? A. After a little routine business was attended to, Colonel Prout stated that the meeting was called by him at the request of Sidney Johnson, and they wanted an appropriation of five thousand dollars, which Mr. Uptegraff, the vice-president, would not approve, and Mr. Johnson wanted it taken up by the board of directors.

Q. Tell us what happened. A. The matter was referred to a committee of three directors, Mr. Rodd, Mr. Rosenwald and myself. We asked Mr. Johnson what this five thousand dollars was for. Mr. Johnson stated he had an arrangement with Mr. Wood that upon the payment of the five thousand dollars Mr. Wood would use his influence for the Union Switch and Signal Company, I think it was in regard to the Center street loop contract. The committee adjourned to another room, with Mr. Levinson, the counsel, and promptly declined to approve the appropriation, and decided to ask for the resignation of Mr. Prout and Mr. Johnson.

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Q. Did Mr. Johnson say Mr. Wood held any official position? A. He was a Public Commissioner of the State of New York.

Q. A Public Service Commissioner? A. Yes, sir.

Q. Did Mr. Johnson state that fact to you at that time? A. It was stated.

Q. Did you communicate your conclusion, the conclusion of your committee, to the board? A. Yes, sir.

Q. What action was taken, if any? A. Their resignations were requested.

Q. Tell what took place there. A. The rest of the — practically the rest of the day was taken up in securing those resignations.

Q. Was Colonel Prout unwilling to give his resignation? A. They were both very unwilling.

Q. Did Colonel Prout say anything about the use of the money for that particular purpose, or was it Johnson made the statement? A. I think it was Mr. Johnson made the statement.

Q. But you asked for Colonel Prout's resignation, as well as Johnson's? A. Yes, sir.

Q. Anything else that you recall that was said or done at that session of the board? A. I don't think so.

Q. The resignations were offered, were they? A. They were, about 4 o'clock, finally demanded, and were then delivered.

Q. How long had Mr. Johnson been in the employ of the company? A. I don't know. He was there when I went on the board.

Q. And you went on in 1913? A. 1913, yes, sir.

By Chairman Thompson:

Q. Why did you request the resignations? A. Why did we request them?

Q. Yes. A. Because we did not approve of their method of getting business.

Q. From your statement here, as I see it, they simply presented this matter to the board of directors; would there be any harm in that, from which you should demand the resignation, if that was all? A. Certainly, they insisted upon the board of directors making an appropriation of five thousand dollars for that purpose.

Q. You say they insisted upon it? A. Yes, sir.

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Q. What did they say about it? A. I think the committee was so much surprised at the nature of the request that there was very little said.

Q. You say they insisted; how do you know they insisted; if they insisted upon it, that is a different situation than if the matter was handed to them. If this matter was given to Mr. Johnson by Mr. Wood, and Mr. Wood said to him, "I will turn this contract over to you if you will pay me five thousand dollars," and Mr. Wood should communicate that information to your officer, and he in turn to your board of directors, if that was all there was of it, there would not be enough there to demand his resignation, would there? A. I think so.

Q. Of course if Mr. Johnson insisted upon paying it, that is another proposition. A. He insisted on it, and said the payment was overdue that day, and he must have the money that day.

Q. What language did he use in insisting upon paying it? A. I don't remember the exact language.

Q. The substance? A. The substance was if he didn't get the five thousand dollars, he would lose his contract.

Q. Did he advise the board of directors to pay the money? A. Yes, sir; he did.

Q. Did he use language to indicate in his judgment the board of directors should pay the money? A. He begged for the five thousand dollars.

Q. He begged for it? A. Yes, sir.

Q. Did Mr. Prout have anything to say about it? A. Mr. Prout was not as strenuous as Mr. Johnson.

Q. What was his position in reference to the payment of this money? A. He wanted the board to approve the appropriation.

Q. Did he ask them to? A. Yes, sir.

Q. What did he say? A. He simply asked, and thought it was for the best interests of the company to pay the money.

Q. Why? A. To get the business.

Q. He stated that he believed it was to the best interest of the company to pay this money and get this business? A. Yes, sir.

Q. Did he state any facts by which it was proved to the satisfaction of your directors that by the payment of this money the business would be gotten? A. After they made the point-blank

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demand for the five thousand dollars, I don't remember any director asking them very many questions about it.

Q. Why did you ask for Colonel Prout's resignation? A. We considered Colonel Prout as guilty as Mr. Johnson.

By Senator Lawson:

Q. Guilty of what? A. Guilty of what?

Q. Yes. A. You might call it bribery, or attempted bribery.

Q. How long has Colonel Prout been president of your company? A. After the death of Mr. Westinghouse, and Mr. Westinghouse died March, 1914, I think the 12th of March.

Q. Had the other members of the board of directors always followed his advice and joined with him in his direction of the company? A. Colonel Prout's do you mean?

Q. Yes. A. Mr. Westinghouse was practically head of the company up to the time of his death.

Q. How many months was Mr. Prout president of the company? A. Mr. Westinghouse died in March and Colonel Prout succeeded at the next monthly meeting, and this happened in July.

Q. He was not president for any great length of time? A. No, sir.

Q. What was Colonel Prout's salary as president? A. Twenty-five thousand dollars, I think.

Q. Prior to that, what was his connection with the company? A. Vice-president.

Q. How long a time was he vice-president? A. I couldn't answer that. He was there when I went on the board.

Q. And took an active interest in directing the affairs of the corporation, didn't he? A. Yes, sir; he presided at all the meetings when Mr. Westinghouse was not there.

By Mr. Lewis:

Q. You were on the board when Mr. Prout was elected president, were you not? A. Yes, sir.

Q. Was his election unanimous? A. I think so.

Q. Had there ever been prior to that time any similar transaction suggested or discussed? A. Not that I know of.

Q. Had the board ever discussed that kind of policy of influencing business? A. Not when I was present.

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Q. This was the first time such a transaction had been suggested to the board, was it? A. Yes, sir.

By Senator Lawson:

Q. Mr. Johnson had been largely instrumental in getting considerable business during his fifteen years' connection with it, had he not? A. He got credit for getting business.

Q. Do you figure you lost a valuable business-getter when you let him go? A. I don't think so.

Q. Have you secured any of these contracts in Greater New York since he was let go? A. No, not that I am aware of.

Q. The company that he went with has, haven't they? A. I have been told so. I cannot answer that directly.

By Chairman Thompson:

Q. Had you heard of this transaction for five thousand dollars before the day of this directors' meeting? A. The afternoon before.

Q. Who told you? A. Mr. Levinson came to my office to see if I could attend a meeting the next day.

Q. What was the discussion at that time? A. If I remember rightly, we did not discuss it very far.

Q. What was the conversation? A. On that afternoon?

Q. Yes. A. Mr. Levinson called at the bank between 2 and 3 o'clock and said there was some trouble in the sales department of the company, and he wanted to know could I attend a meeting the next day, and I think that was the extent of it.

Q. Did you ask the nature of the trouble? A. Yes, sir.

Q. And what did he say? A. He told me about the five thousand dollars.

Q. What did he say about that five thousand dollars? A. I don't remember exactly what he did say.

Q. What did he say in substance? A. He mentioned the fact that Mr. Johnson wanted this five thousand dollars for this purpose.

Q. Is that all? A. That is about all.

Q. I ask you a question on my own account; were you satisfied that this was an attempt to bribe Mr. Wood by Mr. Johnson and Colonel Prout on behalf of your company? A. I was satisfied it was.

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Q. And that was the reason that you requested their resignation, and demanded it and received it? A. Yes, sir.

Q. Why were you satisfied with the mere resignation of these men; you did not give any information to the public authorities about it, did you? A. We did not see anything to be gained by that.

Q. Why? A. We could not recover anything from them.

Q. You think there could not have been anything recovered? A. No, sir.

Q. Was that your answer? A. Yes, sir.

Q. You think your duty to the public is discharged if you cannot get the money back for your company; is that the idea? A. To a certain extent it is. They are not getting the $5,000, and there was no actual harm done in that case.

Q. I think you answered the length of service of Colonel Prout, to your knowledge, only extended from the time you went on the board of directors? A. I said he was on before I went on the board.

Q. You do not know the length of his service? A. No, sir, I don't.

By Senator Lawson:

Q. In connection with the Union Switch and Signal Company, had it ever come to your attention that permission had been asked by people in various parts of the country to influence contracts to your company before this time? A. Not directly. I had heard rumors of it.

Q. Didn't you have knowledge of Mr. Wood influencing the contract with the Kansas City Railroad to your company? A. That matter was never discussed in a board meeting.

Q. Never was? A. No, sir.

Q. That was done independent of the board of directors? A. Yes, sir, it was.

Q. Would you have taken similar action if it had been to what you did in this matter? A. I would.

Q. Mr. Levinson came to your office the day before this directors' meeting and mentioned the matter; did he say to you at that time that Mr. Wood was a Public Service Commissioner of the

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State of New York? A. I don't remember as Mr. Levinson made that statement that day or whether it was brought out in the meeting the following morning.

Q. Would it have made any difference to you as a director whether Mr. Wood had been a member of the Public Service Commission or not? A. Whether Mr. Johnson had tried to buy him, as an individual?

Q. Yes. A. None whatever.

Q. You think the same principle would have applied, as far as you are concerned? A. Yes, sir. It is purely a matter of principle.

By Assemblyman Feinberg:

Q. Mr. McCune, was there anything said at that board of directors' meeting relative to Mr. Johnson's desire to get the money on that day, his eagerness to get the money on that day? A. Was there anything said about it?

Q. Yes; you testified a few moments ago he said the payment was overdue and he demanded it. A. Yes, sir, he insisted he get the money that day.

Q. Do you know of anything that led him to believe he had a right to insist and demand it? A. I don't.

Q. Nothing that had gone before that would lead him to think he had the right to promise it to Mr. Wood? A. Not to my knowledge.

By Chairman Thompson:

Q. I understand, Mr. McCune, your business engagements are such that you want to get back to Pittsburgh at once? A. I would like to very much.

Q. If the Committee needs your attendance further, will you agree to come on a wire from the Chairman of the Committee? A. I will come back next week, if required.

Q. Then I will excuse you, and on the agreement that you will come back on a telegraphic request of the Chairman of the Committee. A. Could you give me a day's notice?

Q. Yes, sir, I will give you a day's notice. A. All right. Telegraph the Union National Bank, Pittsburgh.

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Q. Then if I send a telegram in care of your bank, it will be sufficient? A. Yes, sir. Send it to Pittsburgh and I will get it.

Chairman Thompson.— We will suspend now and I will call an executive session of the Committee in the next room.

AFTER EXECUTIVE SESSION

Chairman Thompson presiding.

Chairman Thompson.— The Committee will come to order.

HENRY G. PROUT, being first duly sworn, testified as follows:

Examined by Mr. Lewis:

Q. Colonel Prout, where do you live? A. Nutley, New Jersey.

Q. And formerly were you a resident of Pittsburgh? A. No, sir.

Q. You were at one time connected with the Union Switch and Signal Company of Swissvale, near Pittsburgh? A. Yes, sir.

Chairman Thompson.— I am going to make the same request of Colonel Prout which I made of Mr. Johnson and which Mr. Johnson refused. That is, that in the light of the testimony that has been given here, your testimony might lead to some fact that might constitute a crime in some way or another, and for that reason I deem it my duty to ask if you will waive immunity?

Mr. Prout.— No, sir. I am not willing to do that.

Q. How long were you connected with that company, Colonel? A. From January 1, 1903, until July 15, 1914.

Q. And during that period what official position or connection did you have with the company? A. I was first vice-president and general manager until the spring of 1914, when I was elected president. I don't remember the precise day of the month.

Q. That was shortly after the death of Mr. Westinghouse? A. Yes, sir.

Q. Who was the second vice-president; did you have a second vice-president during that time? A. We had a — during which time do you refer to?

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Q. During the time you were first vice-president. A. Yes, sir, he was a certain Mr. Scroder.

Q. When you became president, was there a new vice-president elected? A. Mr. Uptegraff was elected vice-president in charge of finance, and Mr. Sidney G. Johnson, vice-president and general sales manager.

Q. Do you recall an occasion when Mr. Johnson advised you of the negotiations which he was having for the Center street loop contract in the city of New York? A. Yes, sir.

Q. Will you tell us of that occasion and what was said and done? A. I cannot tell you of any specific, definite occasion. I can only tell you that he came to me more than once and said that he had been approached by Mr. Wood, who was then a Public Service Commissioner.

Q. And that was after the bid of your company had been submitted upon that contract, or before? A. Why, I don't know. I couldn't tell you whether it was after or before the bid had been submitted, but it was while arrangements were being made looking towards the submitting of a bid, even if a bid had not been submitted.

Q. Did you know Mr. Wood at all? A. No, sir; not at all.

Q. Had you had any transactions with him in connection with the business of the company? A. We had a transaction some months prior to this, when he was a private citizen, when I had no thought that he would ever be an officer of the State.

Q. That was the Kansas City contract? A. It was, sir, yes.

Q. Did you ever see him in connection with that matter? A. I saw him once during that first transaction. He came to our office once and we exchanged the usual greeting, and then I went out and left him there with Mr. Johnson.

Q. That was about what time, do you recall? A. I wouldn't like to guess what time it was. It was a good while before he became a Public Service Commissioner.

Q. Several months? A. Yes, sir. I would not try, however, to fix it accurately.

Q. Did you discuss that transaction with him in any way? A. Not at all, no.

Q. You knew of the confirmation of that contract, did you? A. Oh, yes.

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Q. And you knew of the payment to Mr. Wood of a commission or allowance for his services? A. Yes, sir, certainly.

Q. Did you have any talk with Mr. Johnson prior to the submission of the bids about the fact Mr. Wood had become a member of the Public Service Commission? A. Prior to the submission of the bids?

Q. Yes. A. Why, I wouldn't dare say yes or no to that question.

Q. Did you have any talk with Mr. Johnson on the subject of the prospect of Mr. Wood becoming a member of the Public Service Commission? A. No, sir; never.

Chairman Thompson.— What office did you see Mr. Wood in?

Colonel Prout.— At our New York office, No. 30 Church street.

Chairman Thompson.— You cannot remember the date of that?

Colonel Prout.— No, sir, I cannot tell, but it was while that Kansas City matter was pending. He came in to see Mr. Johnson one day, and we just met and I should not know him if I saw him at this moment. That is the only time I ever exchanged a word with him in my life.

Q. You did submit a bid for the Center Street Loop contract, did you not? A. Yes, sir.

Q. You knew of the fact that a bid had been submitted by the Federal Company? A. I have no specific recollection of that now, but I would say that I was bound to know that my competitors were submitting bids.

Q. Did you know that the Federal Company had submitted a bid lower than your bid? A. No, sir; no.

Q. You knew the amount of your bid? A. Yes, sir.

Q. Of course? A. Yes, sir.

Q. And didn't you know that the Federal Company had submitted a bid of four thousand dollars less than the bid of your company? A. I have no recollection that I ever had any such information. I don't remember that I ever received such information. I will not say that I did not, however.

Q. Did you know that the competition for that particular contract was pretty keen? A. Certainly.

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Q. And did you know at the time Mr. Johnson first spoke to you of the matter of Mr. Wood, and conversations he had had with Mr. Wood, that the bids were open, but the award had not been approved by the Public Service Commission? A. Yes, sir.

Q. Will you tell us just what Mr. Johnson said to you at that time, as near as you can recollect it? A. To begin with, I will not undertake to attempt specifically and definitely to say what language he used, or on what occasions. I can only tell you —

Q. Was there more than one occasion? A. Mr. Johnson and I of course were liable to speak of this matter at any time.

Q. Did you speak of it on more than one occasion with Mr. Johnson? A. Undoubtedly, yes.

Q. Several times? A. Yes, sir; it would be the natural thing in the regular course of our business.

Q. Mr. Johnson was spending the greater part of his time in New York, was he not? A. Yes, sir; but I spent about half of my time in New York.

Q. And you were familiar with the negotiations by reason of your being present in New York during part of that time? A. Not intimately familiar with any such negotiations. I was aware of the fact he was keeping up more or less negotiations with Mr. Wood.

Q. Will you tell us what Mr. Johnson said to you about Commissioner Wood? A. Mr. Johnson said to me that Commissioner Wood would expect to be paid something if the contract went our way through his influence.

Q. Did he say that Commissioner Wood had said that to him? A. That is my recollection.

Q. Did he specify any particular amount that Commissioner Wood would expect to be paid? A. Of course the testimony before this Commission I have read in the newspapers has brought into my mind the definite sum of five thousand dollars. But for that testimony I should not remember that that sum had been mentioned.

Q. This was not a very usual transaction, was it? A. It was an absolutely unusual transaction.

Q. Should not that fact of itself rather incline you to remember distinctly the amount that was mentioned? A. If I had been asked before reading this testimony, I should have been at a loss

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to say whether five thousand dollars or two thousand dollars, or what it might have been. I am trying to tell you honestly.

Q. That is what I want, and what we all want; did Mr. Johnson say to you that he had the assurance from Commissioner Wood, upon the payment of a sum of money Commissioner Wood would undertake to see that the contract was awarded your company; that or words in substance to that effect? A. Well, yes, I should say I should think I would be safe enough in saying that he had assurance from Mr. Wood that Mr. Wood would, under such conditions, would use his influence in our favor.

Q. Did he say further that Commissioner Wood would undertake to see that you obtained the contract in exchange for that payment? A. I don't know that he ever told me that Mr. Wood said positively that he could deliver the contract to us. I doubt if he ever said that, but he would do his best, or something like that.

Q. Was there any discussion that you know of, or did Mr. Johnson report to you any discussion that he may have had with Commissioner Wood as to when the money should be paid, as to whether before or after the award of the contract? A. No, sir, no.

Q. Did Mr. Johnson tell you at any time that the money must be paid on or before a given date? A. No, sir.

Q. Was there ever an occasion when Mr. Johnson said that the money would be due upon a certain date and must be paid by that date? A. No, sir.

Q. Was there any time when Mr. Johnson said that the payment was due on that particular day? A. No, sir.

Q. And that it must be arranged on that particular day? A. No, sir.

Q. What did you say to Mr. Johnson on the subject, when he made this statement to you? A. Mr. Senator, your questions up to this moment — your questions imply that Mr. Johnson had promised to pay him some money.

Q. I wonder what you know upon that subject; I am quite willing you should tell. A. I am not aware that Mr. Johnson had promised to pay him that money. Mr. Johnson brought the matter to me. It is not likely —

Q. Tell what there is about it, in your own words. A. That is what I am trying to do. It is highly improbable that Mr. Johnson

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would have promised to give him money until he had got my consent to his making such a promise.

By Chairman Thompson:

Q. Why? A. Because he could not get the money to deliver.

Q. Had he any right to expect that you would agree with him? A. He came to me with this statement, with this suggestion, and "What shall we do?" I said, "That situation is a critical one, a serious one, and if a man is willing to use his influence in our direction for money, he is willing to use his influence in other directions for money, and it is our duty to the company to keep watch of him, to keep watch of him, and to carry on such negotiations, such conversations with him, as will keep him in line, and keep an eye on him."

Q. And let him think he was going to get the money? A. That would be within Mr. Johnson's discretion.

Q. What was your idea? A. My idea was that he should tow the Commissioner along.

Q. And let the Commissioner think he was going to get his money? A. I think he might, perhaps.

Q. That was your idea, wasn't it? A. Surely.

By Mr. Lewis:

Q. Go on, and tell us what else was said, if you will. A. Well, I couldn't and I wouldn't authorize Mr. Johnson to make any promise that he would pay to the Commissioner any sum of money for his influence unless I had authority to make such promise, either from the board of directors or from the executive committee, and that was distinctly understood between Mr. Johnson and me, that I was not authorizing him to pay any money to this man, and I would not authorize him to unless we were authorized by some superior power, namely, the board of directors or the executive committee.

Q. Let me ask you, did Mr. Johnson see you on this subject the first time it was brought to your attention? A. I really don't remember whether he saw me or not, or whether it was over the telephone. I don't remember.

Q. Did you have any telephone conversations with him on this particular subject? A. I don't know whether we had or not.

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Q. About how long was it before the meeting of July 15th that this subject was brought to your attention, as you recall it? A. Oh, it was some weeks; I have no idea how many.

Q. As much as two or three or four weeks? A. I should say it must have been all of four weeks, but that is rather a dangerous guess, you know.

Q. What did you do in connection with the matter, after it had been submitted to you by Mr. Johnson? A. I took it up with various people in the board and insisted that we must have a meeting of the board to put this matter fully before them, that I would not take the responsibility of letting that contract go or of making any promise to make money payment for the sake of securing that contract, but that it was something that the board would have to act upon, and they would have to give me authority. It might not be amiss for me to say that that loop contract was in our estimation the beginning of a situation there involving these later contracts, and we felt that the company that got the first contract would be in a very strong position towards getting the next, and I was not going to take the responsibility myself. It was my duty to report that matter to my superiors, namely, the board of directors.

By Chairman Thompson:

Q. You knew and your competitors knew that there was going to be a large contract following this one? A. Yes, sir.

Q. And you knew that contract was let in the following December which was, one of the witnesses testified, the largest contract for signals which has been let, which was going to follow; you knew that? A. We knew it would come along eventually.

Q. Your competitors knew it the same as you knew it? A. They knew that that bigger contract would come along in the course of time, and it might be six months, or two years or more. It all had a bearing.

By Mr. Lewis:

Q. What did you do about getting a meeting of the board? A. In the course of time I called a meeting of the board.

Q. Before that was held do you recall the name of any directors with whom you discussed that proposition? A. I talked with Mr.

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Uptegraff about it and I talked with Mr. Rosenwald about it, unless I am very greatly mistaken, and I am not sure I spoke to any other director about it before the meeting of the board.

Q. Where was the talk with Mr. Uptegraff had? A. In my office in Swissvale, and we had a conversation, Mr. Uptegraff and I had a conversation in which this matter came up, at the DuQuesne Club, in Pittsburg, prior to the meeting in my office, when this matter came up.

Q. Was there any other occasion when this matter came up and there was anyone else present? A. This matter was mentioned at the DuQuesne Club and it was not discussed at any length. Mr. Johnson was there, and I am certain Mr. Rosenwald was there, one of the directors, and I feel very sure though that there was a partner of Mr. Levinson's, Mr. Becker, of Chicago, I think was there at this meeting.

Q. That was at the DuQuesne Club? A. Yes, sir. At the DuQuesne Club in Pittsburg.

Q. Will you tell us what the conversation was on the subject of — what the conversation at the DuQuesne Club was on this occasion? A. I know that Mr. Becker who is a large stockholder —

Q. Will you give us his full name and address? A. No, sir, I cannot.

Mr. Levinson.— Benjamin V.

Witness (continuing).— I knew that Mr. Becker at that time expressed himself very decidedly against any such policy, the carrying out of any such policy.

Q. Did Mr. Uptegraff say anything on that subject at that meeting? A. I cannot remember what Mr. Uptegraff said at that meeting, but I know this, that Mr. Uptegraff would not take it upon himself to recommend any such procedure.

Q. Do you remember an occasion when there was a meeting between you and Mr. Uptegraff and Mr. Johnson with anyone else present? A. Yes, sir.

Q. Where did that take place? A. In my office in Swissvale.

Q. Will you tell us the conversation that occurred at that time? A. I can only tell you the general — the general results, namely, that it simply confirmed us all in our feeling that the matter was one that had got to go before the board of directors.

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Q. Was there anything said in that conversation about a method by which the payment could be made without it going before the board of directors? A. No, sir, no specific, no specific suggestion of any methods by which this payment might be made without going before the board of directors. There was some theoretical discussion as to how such payment could be managed, but it was not at all a recommendation or suggestion on the part of anybody there present that this payment should be made, this specific payment should be made to Mr. Wood by that method. It was a theoretical discussion of a method by which such things could be carried out.

Q. Will you tell us what those methods were that were discussed or spoken of? A. Well, sir, I think possibly it is unfortunate that I have refreshed my memory by reading Mr. Johnson's testimony, because otherwise I should not be able to tell you what method was suggested, and now what I shall say it is perhaps quite as much my recollection of what Mr. Johnson has testified as my recollection of what took place upon that occasion. In other words, I do not remember specifically and definitely what the conversation was.

Q. You do remember that there was a method suggested? A. There was some talk about how such things might be done, yes, sir.

Q. You have read Mr. Johnson's testimony? A. Yes, sir. I am sorry I have.

Q. Have you read the suggestions that Mr. Johnson spoke of? A. He says that Mr. Uptegraff suggested that he might pad his expense account and so take care of such payments.

Q. Do you recollect that as a matter of independent recollection? A. Not clearly, no. I cannot tell at this moment how much is my recollection and how much has been brought into my mind through the —

By Chairman Thompson:

Q. No matter how you got it in your mind, is it true? A. I think it probably is, but I want to say specifically and definitely now, of this I am positive, that Mr. Uptegraff did not suggest that as a way in which we might pay this money to Mr. Wood, or a way in which would be desirable, and there, I think, is where Mr. Johnson's recollection of that conversation is somewhat at fault.

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By Senator Lawson:

Q. Who did suggest it? A. I think there is no question but that— From what Mr. Johnson has testified, I think there is no question but that Mr. Uptegraff might have said on that occasion it would be possible to make such a payment in that way, but what I wish to bring out very distinctly is this, that I feel perfectly confident that Mr. Uptegraff did not suggest to Mr. Johnson that he pay that money to Mr. Wood and pad his expenses in order to cover that payment. I feel perfectly confident he made no such suggestion.

By Chairman Thompson:

Q. Are you sure such a suggestion of that kind was made? A. No, sir; because, as I said at the outset, it is impossible for me to know how much is recollection of what took place and how much is semi-recollection.

Q. You and Mr. Johnson, of course, are in the same boat, but don't let that influence you. Just tell us the true situation. A. I am trying to.

Q. We come here from a different part of the country, and we understand only the ordinary language; tell us the facts. A. I am trying to.

Q. Don't try to raise an insinuation that you don't know about it; if you know about it, we want it. A. If I don't know about it, then what?

Q. Tell what you know about it. A. I am trying very carefully to make a distinction between that which I know positively and that which is a matter of very uncertain and indistinct recollection.

By Mr. Lewis:

Q. Continue and give us the rest of what you recollect as conversation. A. The only thing that is worth saying about that conversation is that it was decided then and there that we should try to get a directors' meeting and put this matter up to the board of directors.

Q. Do you recall any other method that was suggested by which this payment could be made? A. No, sir, and I hope that I have made myself perfectly clear.

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Q. I think you have, Colonel, as far as your recollection goes; how long did this conference last, this particular conference? A. I don't know. It might have been half an hour, and might have been less.

Q. Was the subject of the larger contract also under discussion at that conference? A. I cannot say whether it was or not.

Q. Was there any suggestion that if you should lose the smaller contract, you would likely lose the larger one? A. I recall nothing of that in this particular conversation.

By Chairman Thompson:

Q. You are perfectly definite there was some suggestion made that there was a way out, whether it was intended to be acted upon or not? A. I don't think I have insinuated that. What I have said is that was an academic or theoretical discussion, as I remember it, a theoretical discussion of how such payment could be made, whether it should be made to Mr. Wood, or John Smith, or in connection with this case, or something else.

Q. There was a theoretical discussion of it? A. Of how such an arrangement might be made.

Q. You are certain of that, on your own recollection? A. Yes, sir — well, tolerably so.

By Mr. Lewis:

Q. Was there anything said at the DuQuesne Club — and by the way, when was that conference held at the DuQuesne Club with reference to the conference at your office? A. Before.

Q. The DuQuesne Club conference was first? A. Yes, sir.

Q. Was there anything said at either of those conferences about anybody's resignation? A. No, sir.

Chairman Thompson.— We will suspend now until to-morrow morning at 11 o'clock, and the witnesses are directed to appear at that time, and we will continue the examination of Colonel Prout at that time.

Whereupon, at 5:30 o'clock P. M., an adjournment was taken to 11 o'clock A. M., December 18, 1915, at the same place.

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DECEMBER 18, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Committee called to order at 11 A. M., pursuant to adjournment

A quorum present.

Senator Thompson presiding.

Chairman Thompson.— The Committee will come to order.

HENRY G. PROUT, recalled.

Examination by Mr. Lewis:

Q. Colonel Prout, who is Mr. Cruse? A. Mr. Cruse?

Q. Yes. A. He is an attorney who was the patent attorney of the Union Switch and Signal Company during all my connection there.

Q. Where is his office? A. 30 Church street.

Q. In the employ of the Union Switch and Signal Company? A. Yes, sir.

Q. I think you said that you had only met Commissioner Wood once in all your connection with him or acquaintance with him? A. That is true, sir.

Q. I read from the testimony of Commissioner Wood at page 2241:

"Wasn't it a fact that he, Johnson, was discharged by the Union Signal Company in July, 1914? A. I don't remember that.

"Q. Which company was he interceding for when he called? A. He represented the Union.

"Q. Not the Federal? A. No, sir, not the Federal.

"Q. What did he talk about when he came up there? A. He talked about the patents, was all.

"Q. Didn't he ask you to arrange to award this contract finally to the Union Signal Company? A. He said they were going to make a patent fight, and he did not think the Federal had the patents, and they were going to fight them.

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"Q. You felt friendly to him, didn't you? A. Not any more than anyone else.

"Q. Wasn't he the man that made the settlement of fifteen hundred dollars for the previous service you testified to? A. No, sir, the president.

"Q. Who was he? A. Colonel Prout."

Q. Did you settle the fifteen-hundred-dollar transaction with Commissioner Wood, Colonel Prout? A. Not directly with him. Either by letter or by communication. All the relations that I had with him were through Mr. Johnson.

Q. Do you recall receiving a letter from Mr. Johnson in which Mr. Johnson asked that the check for Commissioner Wood be in this office not later than Monday? A. You are referring to what check now, sir?

Q. Referring to the check for fifteen hundred dollars for Mr. Wood, in response to which letter a check for fifteen hundred dollars, dated May 4th, was forwarded to Mr. Johnson? A. I do not recall any such letter, no, sir.

Q. Well, Mr. Uptegraff produced, and there was read into the record, a letter addressed by Mr. Johnson to the company or to you, in which he asked for a check of fifteen hundred dollars to be forwarded to reach him not later than Monday for delivery to Mr. Wood; in response to that letter a check was forwarded dated May 4th. Did you know at the time of any reason why Mr. Johnson was so anxious to have that check reach him not later than Monday? A. No, sir; no, sir.

Q. Mr. Johnson never gave you any explanation of that request, did he? A. Not that I remember, sir.

Q. Did you know at the time that Commissioner Wood either had been or was about to be appointed a Commissioner of the Public Service Commission? A. No, sir.

Q. Have you any recollection of when you first learned of the fact that he either had been or was about to be appointed to the Public Service Commission? A. No, sir; I remember nothing definite about that at all, sir.

Q. Are you on friendly terms with Mr. Uptegraff, Colonel Prout? A. I candidly — quite candidly, I should say that we are not on friendly terms.

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Q. And have you been on friendly terms with him since you ceased to be president of the company? A. Nothing has passed between us that would be construed as unfriendly, but we have very seldom met and only in the most casual way.

Q. Have you had any correspondence with him? A. Not at all, sir. Not after the first week, perhaps. The first week after I left the company.

Q. Have you had any correspondence with or negotiations from Mr. Levinson, or discussions with Mr. Levinson? A. No.

Q. Neither correspondence or communications, directly or indirectly? A. No, sir.

Q. Or with Mr. McCune? A. No, sir.

Q. Had anybody representing either of those gentlemen called upon you or discussed with you the character of the evidence which you should give upon this hearing? A. No, sir.

Q. Have any efforts been made by those gentlemen or any of them, or by anyone representing them or any of them, to influence your testimony taken here? A. None whatever, sir.

Q. You left the employ of that company on the 15th of July, as I remember? A. Yes, sir.

Q. Where were you next employed? A. I entered the employ of the Hall Switch and Signal Company on the 26th of the following October.

Q. And are you still employed by that company? A. No, sir. I left that company in the middle of August.

Q. Did that company make a bid, submit a proposal for the construction of the Fourth Avenue Signal System? A. Yes, sir.

Q. Do you recall the amount of the bid? A. Why, it would be a wild guess, but I know it was very high; it was very much higher than the other bids.

Q. Did you have anything to do with the preparation of that bid? A. No, sir. It was put in before I became connected with the company.

Q. Was any effort made by the Hall Company to obtain that business after the bids were opened? A. No, sir.

Q. It abandoned the proposition after they found they were high? A. Let it go on the face of the bid with no effort to do anything more.

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Senator Thompson.— How much was that bid?

Mr. Prout.— How much was the bid?

Chairman Thompson.— Yes.

Mr. Prout.— Well, my recollection is it was considerably over two million dollars, but I would not want to be bound.

Chairman Thompson.— About twenty-four hundred thousand, wasn't it?

Mr. Prout.— Well, very like so, yes, sir.

Examination resumed by Mr. Lewis:

Q. Was there any working agreement between the Hall Company and the Union Company, Colonel Prout, during your connection with the Union Company? A. No, sir.

Q. Was there any transfer or interchange of patent licenses between the Hall Company and the Union Company? A. Yes, sir.

Q. And was there any agreement as to the control of the business as between the Hall Company and the Union Company? A. No, sir.

Q. There was an interchange of patent licenses between the Union and the General, was there not? A. Yes, sir.

Q. Will you tell us about that? A. Would you like to have me tell it at length and quite extensively?

Chairman Thompson.— Tell what there is of it.

Examination by Mr. Lewis:

Q. I think you better tell us what there is of it.

Chairman Thompson.— Colonel, just get at the facts. Get at the facts just the same as though you were talking to us.

Mr. Prout.— The only reason I asked the question, how much of your time to take in telling this story.

Chairman Thompson.— Take enough time to tell the story.

Mr. Prout.— Well, there is a certain group of patents in this art which are comparatively new, the patents controlling the use of the alternating current, or the control and operation of signals.

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That is a new art that has developed entirely since we will say 1903. The Union Switch and Signal controlled, under the patents which we considered fundamental in that art, namely the patents issued to Mr. Struebel, who was an employee of the Union Switch and Signal Company.

Chairman Thompson.— How do you spell that name?

Mr. Prout.— S-t-r-u-e-b-e-l. The General Railway Signal Company owned a group of patents which were alleged to cover certain rather essential details. The patent litigation, or at least the proceedings in the patent office went along for a number of years, and finally got up as far as the District Court of Appeals in the District of Columbia. We got our respective patents. We got our respective patents. There were interference proceedings going on for those years, and a very great deal of money spent. Then the next step was that the Union Switch and Signal Company brought suit against the General Railway Signal Company for infringement of the Struebel patents in the installation on the New York Central, the signals and interlocking of the grade terminal there. The General Railway Signal Company about the same time brought suit against the Union Company for infringement of their alternating patents in a certain installation that we had made on the Long Island Railroad. The result was that the trial was had in the United States District Court, sitting at Trenton, and we got a decision, and then of course arose at once the question of appeal, and all the expense and the dangers that might arise from an appeal. So after a while, Mr. Salmon, the president of the General Railway Signal Company, and I acting for the Union, we got together, and in the course of time, after a great deal of negotiation, we reached an agreement by which we licensed, each company licensed the other company during the life of those patents, which I think is to 1925, as I remember now. That agreement, as I remember, was signed and became operative in October of 1910. Under that agreement the Union Switch and Signal Company was to have in consideration of our stronger patent decision, was to have 75 per cent of the gross business, which was done under these alternating current patents. The General Railway Signal Company was to have 25 per cent of the gross business. Now, if the

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billings during any period for which settlement was made, quarterly as I remember, if the billings showed that either company had exceeded its seventy-five or its twenty-five, the company so exceeding should pay to the other company twenty per cent, as I remember,— that is essentially right, at any rate, of the twenty per cent of the excess of the gross billings. That was the agreement into which we entered, the patent agreement.

Q. And was that agreement in force when you left the company? A. Oh, yes, sir. It is still in force. Down until the expiration of the life of the patents.

Chairman Thompson.— At that time you made this agreement, did you consider that you were confronted with any difficulties on account of the Sherman Act?

Mr. Prout.— No, sir. That matter was very carefully considered by the attorneys of both companies, and our supposition was that it would be perfectly safe and proper to have the agreement lithographed and hung on the walls of our office.

Examination by Mr. Lewis:

Q. About what time was that agreement entered into, Colonel Prout? A. In October, 1910, it became effective.

Q. Became operative? A. Yes, sir.

Q. Were there settlements from time to time under the terms of that agreement between the two companies? A. Periodically. They were quarterly, if I am right in that, if the settlement was quarterly. Whatever that was, the settlements were made for each agreed period.

Q. And money paid back and forth on the settlement in conformity with the terms of the contract? A. Yes, sir.

Chairman Thompson.— What was the real purpose of that agreement, what was the object?

Mr. Prout.— There were several important objects to be accomplished. In the first place, the litigation which was bound to go on, was adding to the cost of carrying on our business, and we felt that that would make an entirely unnecessary charge upon the signal business. Because, if the business is to live and go on,

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somebody has got to pay that cost. We felt, and I still think correctly, that it did not, it did not prevent competition in that alternating current field, because there were the two companies ready to bid. Mind you, there was no price restriction, no price restriction was made in that agreement.

Chairman Thompson.— And no agreement as to terms, or was there? A. Oh, no, sir. As to terms, just exactly what do you mean by terms?

Q. Terms of payment or terms of rebate? A. No, sir. Nothing more than what I have told you.

Chairman Thompson.— Well, did it have the effect of preventing any other company of competing with either one of these two companies?

Mr. Prout.— Why, so far as the patents controlled the situation.

Chairman Thompson.— And the reason why you had to have good lawyers was to be sure to lay it to the patents and thereby escape the provisions of the Sherman Law?

Mr. Prout.— The only possible justification, as I understand it, was the fact that the two companies own the patents which control that art.

Chairman Thompson.— And that was the reason why you exercised so much care in drawing that agreement?

Mr. Prout.— Yes, sir.

Examination by Mr. Lewis:

Q. It was the fact, was it not, that your company under its patents, found itself unable to meet the demand for satisfactory signalling devices, without the use of the series of patents owned by the General Railway Company, and vice versa? A. Yes, sir. That is to say, each company ran a very distinct peril by attempting to do these things without using the other man's patents.

Q. And under the terms of that agreement, there continued to be periodical, at the end of each period specified in the contract, a settlement and payment in accordance with the terms of the contract? A. Of course, gentlemen, you understand I cannot say except by hearsay.

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Q. But that continued to be down to the time you left the company? A. Yes, sir; quite so.

Q. The relations between the two companies down to that time were pretty friendly, were they not? A. Quite friendly, yes, sir.

Q. And since your resignation as president, they have not been so friendly, I take it? A. Well, I don't know, sir. I don't know about that.

Q. You have been connected with the Hall Signal Company a good part of the time since you ceased to be connected with the Union Company? A. Yes, sir.

Q. And you have been in an atmosphere of the signal business of the company, have you not? A. Yes.

Q. And I assume you have kept up to date on the gossip of the signal business and the transactions that were going on? A. I have heard considerable gossip.

Q. You have met Mr. Uptegraff from time to time since you left the office of the company? A. Very rarely indeed, sir, and then only casually in somebody else's office.

Q. By appointment? A. No, sir, never.

Q. And on those occasions have you talked with him about business that was pending, or business for which bids had been presented? A. No, sir, not a word.

Q. You knew, of course, that the Union Company had bid for the Fourth Avenue contract? A. Oh, yes, sir.

Q. And you knew that the General Railway Signal had bid for that business? A. Yes, sir.

Q. Did you at any time discuss with Mr. Uptegraff or with anyone connected with the Union Switch and Signal Company the fact that the General Railway Signal Company was higher than the Union? A. Never.

Q. Have any conversation with anyone connected with the Union Company on that subject? A. Never, no, sir.

Q. Did you know of the fact that hearings were being conducted by Commissioner Wood upon this patent situation which you have discussed? A. Just as a matter of general information. I had no specific information.

Q. Didn't you get it from anybody connected with Hall Company? A. No, sir.

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Q. You were with the Hall Company at that time, were you not? A. I was with the Hall Company from October 26, 1914, until the middle of August.

Q. That was after the hearing upon the loop contract, then, was it not? A. Yes, sir.

Q. After the hearing that Commissioner Wood conducted upon this patent subject? A. I really do not remember the date of that hearing that Commissioner Wood conducted. That is a matter can be verified very easy by the records.

Q. Did you hear any discussion of the manner in which these hearings that Commissioner Wood was conducting were carried on? A. No, sir; I never heard anything about it.

Q. Did you know of the fact that they were to be held? A. Yes, as a matter of common knowledge.

Q. Knew in advance, did you, of the fact that such hearings were to be held? A. In advance of the hearing? Well, presumably so. My recollection is not clear about that. My information was the information that everybody could have.

Q. Where was the Hall office? A. 50 Church street.

Q. And the office of the Union? A. 30.

Q. And of the General? A. 30.

Q. Was the Hall office at any time in the building at 30 Church street? A. Not after my connection with it.

Chairman Thompson.— Well, it is all one building there, anyway, 50 and 30?

Mr. Prout.— Nothing but a corridor between.

Chairman Thompson.— You have got a bridge that goes across between?

Examination by Mr. Lewis:

Q. There was a signal atmosphere throughout that building, isn't there? A. There is a very special railroad supply atmosphere throughout that building.

Q. Includes signals? A. Includes signals, yes, sir.

Q. It is largely used by supply companies as a headquarter? A. It is a very favorite place for the officers of supply companies.

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Q. And a great many people in and out there representing railroads engaged in negotiating for supplies for their use? A. Necessarily, yes, sir.

Q. And you were there for a period of time covering this transaction? A. Yes, sir.

Q. And you heard no gossip in connection with it? A. In connection with the hearing?

Q. Yes. A. Nothing that I remember, sir.

Q. Do you know when the bids were submitted for the Fourth Avenue contract by the Union and the General, or did you know of the bids in advance, that they were to be submitted? A. Oh, as as a matter of general knowledge.

Q. Not officially? A. Not officially, no, sir.

Q. Did not get it from anyone connected with either company? A. No, sir.

Q. Did you know that the Federal Company was the low bidder on the Fourth Avenue contract? A. I feel pretty sure that I heard that, sir.

Q. Do you remember from whom you heard it? A. That, again, would be a matter of general information. In the air, drifting around, nothing from any official of any company.

Chairman Thompson.— Theoretical?

Mr. Prout.— It was a matter of general information. It was in the air.

Examination by Mr. Lewis:

Q. Did you hear of the fact that the General Company had offered a substitute of some sort, cab control proposition? A. Yes, sir.

Q. Where did you hear that? A. Well, I would say, in all probability, some of the engineers of my own company told me that. I would think so. I remember distinctly that I heard that that was the case.

Q. Did you hear it discussed as to its feasibility or practicability? A. No, sir.

Q. Nothing said on that subject? A. That scheme had been before us before I left the Union Company, so that I knew something about it and had some opinion as to its practicability.

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Chairman Thompson.— There is about six patents a week on speed stops and speed controls, isn't there?

Mr. Prout.— Why, sir, when I started in —

Chairman Thompson.— Well, you know whether there is or not?

Mr. Prout.— All right, yes.

Chairman Thompson.— Everybody is getting up a patent and have been?

Mr. Prout.— I was going to give you an illustration.

Chairman Thompson.— There isn't any use taking a lot of time, because the speed stop proposition is thoroughly well understood between railroad men, and they have got a committee of New York Central lines that have been looking into it for three or four years?

Mr. Prout.— Yes, sir.

Chairman Thompson.— And they have taken up all those patents.

Mr. Prout.— Yes, sir.

Chairman Thompson.— Including this one?

Mr. Prout.— Yes, sir.

Chairman Thompson.— And they have found there haven't any of them been practicable up to date, practical enough for them to think of the installation of any of them?

Mr. Prout.— That has been the general judgment.

Chairman Thompson.— And there is probably upwards of 500 different stop devices on different speed controls?

Mr. Prout.— More than that.

Examination by Mr. Lewis:

Q. You did hear that matter discussed, then, the speed control proposition, as offered by the General Company, as a substitute for the proposition on which they had bid? A. Why, there was a little talk about it in our own office, among our own people.

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Q. And was it regarded as a feasible proposition among your own people? A. Yes, sir. We thought it might be developed into a feasible thing.

Q. Did you think that it had been developed up to that time to such an extent as to warrant a Public Service Commission approving a proposition for its installation? A. I don't know really that I have a right to express an opinion on that. It is a very serious,— yes, I would say that they would be justified in that, in placing a contract for the installation of that, with a responsible, highly organized signal company, because that company takes the responsibility of the development.

Q. And would the installation of that system result in the lowering of the cost to the company, in your opinion? A. It was my understanding that it would, yes, sir.

Q. What was your information on the subject? Did you have any specific information on that subject — make any study of it to ascertain whether it would? A. Not enough to have an opinion of any value, no, sir.

Q. Did the Union Signal have any speed control proposition which it could have submitted? A. Yes.

Q. Practicable? A. No. I think I may as well say they have nothing that would be applicable to that case. Now, let me stop — the Union Switch and Signal Company had — they installed the control apparatus in the Interborough here and that was the first great example of speed control.

Q. Well, then, they had that as a shining example, did they not? A. Splendid. But when I say not applicable to this particular case over there, I have in mind the fact of the large cost that would be involved in putting in that kind of speed or control there. It was rather more a commercial matter than an engineering matter.

Q. Excessive cost, prohibitive, was it? A. Just this way, sir — that the speed control in the subway is a pneumatic apparatus. The motor power for operating the trip of the track is compressed air. It is not the intention to use compressed air in that signaling installation over there, and that being the case, the introduction of the compressed air, an electric, pneumatic control, would have been brought in an extra cost.

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Q. Did you see Mr. Uptegraff or anyone representing that company here in New York during the time after the bid was submitted, and before the contract was awarded? A. I remember no such case, no, sir.

Q. Who was their sales agent after Mr. Johnson left the employ of the company? A. Why, I think that Mr. Aaron Dean came in first after Mr. Johnson.

Q. Did you see Mr. Dean? A. Never, no.

Q. Did you hear of any meeting between anyone representing any company with Mr. Wood? A. No, sir.

Q. While that matter was pending? A. No, sir.

Q. You heard Mr. Levinson's testimony yesterday — you were not here? A. No, sir.

Q. Have you read it since? A. I read such brief reports as I seen in some of the papers.

Q. Mr. Levinson says that you and Johnson promised to pay this money to Wood? A. Yes.

Q. Is that true? A. No, sir; not within my knowledge.

Q. Well, you would have knowledge if you promised? A. If I promised? Certainly. I did not promise.

Q. Did Mr. Johnson tell you that he promised to pay the money to Wood? A. I would say contingent — well, it was put up to me. Mr. Johnson put the matter up to me whether he should pay Mr. Wood or whether he should not pay Mr. Wood.

Q. Well, did he say to you at any time that he had promised to pay Mr. Wood? A. I don't remember that he did, no, sir.

Q. Did he say that the payment must be made by a certain day? A. No, sir; not to my recollection.

Q. On the day that the board met, did Mr. Johnson say to you and to Mr. Uptegraff, or to anyone else in your presence that to-day is the last day, and if we do not pay it to-day, we won't pay it at all? A. Absolutely not.

Q. Anything to that effect? A. Absolutely not, within my recollection.

Q. Who suggested this meeting of the board of directors? A. I think it was probably I that did, sir.

Q. For what purpose? A. This matter was one which we had been — Mr. Johnson and I had been exceedingly insistent upon,

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that it should be settled; that our policy with regard to that should be settled by the board of directors.

Chairman Thompson.—And you were willing to have a policy with reference to paying somebody five thousand dollars for their vote in the Public Service Commission?

Mr. Prout.— It is not necessary that I should say that I was willing.

Chairman Thompson.— You were willing to take it up with your company, to create a policy with reference to that sort of business?

Mr. Prout.— I was willing to take it up to the board of directors and let them decide whether that policy should be adopted.

Chairman Thompson.— I say you were willing to have the policy?

Mr. Prout.— I do not say I was. I do not know I would have voted for it as one of the board of directors. I believed it was my duty to bring that matter to the board of directors.

Chairman Thompson.— Do companies of this kind have a business policy in reference to this sort of thing?

Mr. Prout.— I don't know, sir.

Chairman Thompson.— Did the Union?

Mr. Prout.— Did the Union?

Chairman Thompson.— Yes.

Mr. Prout.— No, sir.

Examination by Mr. Lewis:

Q. Mr. Levinson also says: "That I understood the promise was made by Mr. Johnson, but the whole transaction was fathered and approved by Colonel Prout, and they were both pressing for the immediate payment." A. That is not true, sir.

Q. Was it fathered by you? A. No, sir.

Q. Was it approved by you? A. No further than I told you yesterday; that first it was important to keep watch of Wood; second, I considered it my duty to the Union Switch and Signal

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Company to let the directors decide whether or not so serious a matter — what should be done in so serious a case.

Q. Was anything said about the necessity of you and Mr. Johnson making your word good? A. No, sir, not within my recollection, sir, absolutely not.

Q. Is it true that you had meetings all day from early in the morning until late in the afternoon? A. Why, I would say at a guess that the meeting of the board that day extended over three hours, but that is rather vague.

Q. What time did it start in the morning? A. I can't say that, sir.

Q. Did you adjourn for lunch? A. No.

Q. Continued in session? A. Probably for three hours, I would think, but that is a rather wild guess.

Q. Did it last until 4 o'clock in the afternoon? A. No, sir, not as late as that.

Chairman Thompson.— Now, Colonel, I do not — this Committee do not understand what you are trying to tell here, very well.

Mr. Prout.— I am trying to answer these questions.

Chairman Thompson.— Now, you were drawing twenty-five thousand dollars a year from this company?

Mr. Prout.— Yes, sir.

Chairman Thompson.— You were president of it?

Mr. Prout.— Yes, sir.

Chairman Thompson.—And on that date you lost your job?

By Chairman Thompson:

Q. Now, this must be pretty well within your recollection? A. Surely, yes.

Q. Your recollection is pretty good about it, that you lost your job at twenty-five thousand dollars? A. Yes, sir.

Chairman Thompson.— Now, the details of what happened that day must be pretty well within your recollection?

Mr. Prout.— Yes, sir.

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Chairman Thompson.— Now, why not tell us?

Mr. Prout.— Haven't I answered the question directly?

Chairman Thompson.— No, I don't think you have.

Examination by Mr. Lewis:

Q. Did Mr. McCune say to you that "If you do not resign in a minute, I shall make a motion to oust you?" A. My recollection is five minutes.

Q. Did you present your resignation within five minutes of the time that notice was served upon you? A. I would say it might have been fifteen.

Q. Did he say the same thing to Mr. Johnson? A. That was not in my presence.

Q. The demand for Mr. Johnson's resignation was not made in your presence? A. It was not made to Mr. Johnson in my presence, no. Mr. Johnson was called in and told that I had resigned.

Q. Did he beg for time? A. I can't say, sir. I was not present. I was not present at that interview with him.

Q. You left the room after you resigned? A. I left the room and Mr. Johnson was called in afterwards.

Q. Well, weren't you present in the room with Mr. Johnson any time? A. Yes, prior to that.

Q. And after the demand had been made upon him for his resignation? A. No. There were no further proceedings after that.

Q. And didn't you say to the company that you thought it was unjust of them to discharge Mr. Johnson in that way? A. That was after the demand had been made, yes, sir.

Q. And after you had resigned? A. Yes, sir.

Q. And in Mr. Johnson's presence? A. I am not sure whether he was there or not. I think he was, though, I think he was.

Q. Had Mr. Uptegraff been elected president at that time? A. I can't remember precisely. It is possible that he had. I can't remember that precisely just how that did go.

Q. Did Mr. Uptegraff make the demand for Mr. Johnson's resignation? A. Did Mr. Uptegraff? I can't say which of the directors.

Q. Did Mr. McCune make the demand for your resignation? A. No, sir. Mr. McCune, as you have been told.

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Q. Did Mr. Johnson tell the board of directors in your presence that he had agreed to pay Commissioner Wood, and that the payment was overdue? A. No, sir.

Q. Did you know that Johnson had made a promise of that character? A. No, sir.

Q. Mr. Levinson says "that was Johnson's promise — not Prout's." A. Yes.

Q. "But the Colonel knew all about it and had co-operated with Johnson in the dealing with Wood." Had you co-operated with Johnson in dealing with Wood? A. I had instructed Mr. Johnson to keep very close touch with Wood and to carry him along until we could get a decision from the board of directors as to what was to be done. That was my broad, general instructions.

Senator Lawson.— Well, what did you mean by that, to tow him along, or carry him along?

Mr. Prout.— Yes, string him along, as somebody says.

Senator Lawson.—And then you were right up against it, against the day of final settlement when this matter came up before the board of directors? A. No, sir. I do not consider we were up against the day of final settlement. What do you mean by the day of final settlement?

Senator Lawson.— The testimony is that certain promises had been made and it was now up to somebody who had made these promises to make good?

Mr. Prout.— I do not understand it so, no, sir.

Senator Lawson.— Well, it arose in your office, this meeting, that something had to be decided on, to keep good the word of some one in your employ?

Mr. Prout.— Something had to be decided upon some time, but no day or date that I know of.

Senator Lawson.— Well, the towing along had reached that crisis where it had to be culminated, didn't it?

Mr. Prout.— No, I will not say that. I will not say more than this, sir: That we recognized that it was a thing that could not

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go on indefinitely. It was a matter most disagreeable and annoying to Mr. Johnson and to me, and we insisted upon having the question settled by the board of directors; and as you are aware, it got settled.

Senator Lawson.— You admit, Colonel, that Johnson was acting under your specific instructions?

Mr. Prout.— Yes, general instructions.

Senator Lawson.— I do not know what you mean by the difference between general and specific —he was following the instructions that you gave him.

Mr. Prout.— Yes. I did not instruct him to offer to give the man money because neither one of us had any authority to pay the money.

Senator Lawson.— But you did instruct him to tow him along?

Mr. Prout.— I did. Yes, sir.

Examination by Mr. Lewis:

Q. How long had the members of the board known of the fact that Wood had demanded money from Mr. Johnson or had asked for money prior to the date of this meeting? A. Oh, whether it was a question of ten days or two weeks I cannot say, sir, but there had been some talk to various gentlemen about it.

Q. And up to the day of the meeting of the board of directors had there been any opposition expressed to the payment of the money by any director? A. I think no definite opposition and yet I am not sure — I am not sure but that some director had said that he would not stand for that policy, but I am not sure about that. At any rate, we looked upon it as something that the board had got to take care of.

Q. In the meantime it had been suggested that the $5,000 item could be included in Johnson's expense account? A. That suggestion, as I told you yesterday — it first came into my mind in reading Mr. Johnson's testimony. I do not remember distinctly that such a suggestion was made at that meeting at Swissvale — I do not remember that distinctly, but when I read Mr. Johnson's testimony, of course I began to skirmish around in my mind, and it

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occurred to me that perhaps such a suggestion had been made. I would not say that it had not, and I would not say that it had.

Q. Isn't it true that suggestion was made at the DuQuesne Club at the night you were there? A. No, sir, I don't think so.

Q. And wasn't it talked over among several directors? A. No, sir.

Examination by Senator Lawson:

Q. Colonel, tell us what the discussions were at the DuQuesne Club? A. We had a discussion there on this very matter of Wood. That is the discussion was between Mr. Uptegraff was there, and my recollection is that Mr. Rosenwald was there, but as to that I will not swear, but I think he was and a Mr. Becker.

Q. Now, what did Mr. Uptegraff talk about at that meeting? A. What did he talk about?

Q. Yes. A. Well, he talked about the general difficulty of such a course or proceeding.

Q. Did he talk about the propriety of it or anything like that? A. No, I don't think he did.

Q. Well, what did he say generally? A. Generally, that it was something we could not do, we could not carry out until it was decided by the board of directors.

Examination resumed by Mr. Lewis:

Q. Well, the board of directors was substantially all there, those that were in America? A. Oh, no, only three of us.

Examination by Senator Lawson:

Q. Well, you talked about these negotiations that had been carried on, and your conversation with Mr. Johnson and what Mr. Johnson's conversations were with Mr. Wood, and these directors knew you had reached a point where something had to be decided upon if this money was to be paid, if it was to be paid at all? A. Yes.

Q. Now, let us have some of the details of that? A. No, sir, I won't admit that there was at that DuQuesne Club any such discussion as to how those payments were to be made. All that I say is that I am not at all sure but that such a suggestion did arise at the meeting in my office at Swissvale. But I do not really think that any suggestions came up at the DuQuesne Club meeting because we had not reached that point.

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Q. At this meeting you certainly discussed this business with your fellow directors? A. Yes, sir.

Q. And your fellow directors were familiar with what had gone on prior to that night? A. Yes.

Q. Now, you discussed that, didn't you? A. Yes, we talked it over.

Q. Well, did they discuss at that time the prospect or possibility of letting Mr. Johnson go? A. No, sir.

Q. They did not? A. No, sir.

Q. Now, this Committee would like to know, and believes it is within its right to know, just what the pertinent discussions were relative to this matter of paying Mr. Wood $5,000 that was discussed by your fellow directors at the club that night — you did not just meet to have a highball, you met there to discuss business. A. The simple statement is that here were relations — there was an actual contract pending here now — there was a very much larger contract in sight, and it seemed as if Mr. Wood would have it in his power to swing that first contract, and it seemed that the company that got the first contract would be in an important strategic position in connection with the next. That is, they would be there and be on the ground and would have their apparatus in. And it seemed as if it was a very important thing to get that contract. Now, that was the fundamental proposition — that is pretty clear, isn't it?

Q. Yes. A. Now, the next question is, how far should we go in taking care of Wood and in trying — in using him — trying to use him to swing the contract, and we all agreed then and there that we could not take responsibility, these two or three gentlemen who were gathered there could not take the responsibility of throwing Wood down, turning him down definitely and positively, nor could we take the responsibility of saying to Mr. Wood, "Yes, we will take care of you." The situation was so important that we all felt that the directors had got to decide it.

Q. Well, you had a certain number of the directors there? A. Uptegraff is not a director.

Q. Well, he was a large stockholder? A. I can tell you distinctly what he said.

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Q. Tell us? A. Uptegraff said he would have nothing to do with such a policy and he considered it very bad policy.

Q. Still it was not up to him as a director? A. No, sir.

Q. Now, if you can tell us distinctly what he said, why can't you tell us distinctly what the other directors said? A. The other directors simply said what I have told you, that it was something they could not and would not decide; that it had got to go to the board. It is time enough for the individual director to express his opinion when it comes to the necessity of voting in the board. Now, if you want to know my opinion.

Q. Let us have it if it is brief. A. My opinion is, if a resolution to that effect had been brought up in that board meeting that every director there would have said, "I wish to be recorded as voting no."

Examination by Chairman Thompson:

Q. And if they had all said yes, would you have gone on and carried out this proposition to bribe this man? A. Is it fair to ask me that question?

Q. Well, I ask it? A. I don't think I would. Honest Injun, I think I would have resigned.

Examination by Senator Lawson:

Q. Now, you said yourself and your board realized the importance of awarding the Center street loop contract, and that it was the forerunners of the Fourth Avenue subway contract to follow? A. Yes, sir.

Q. You realized that? A. Yes, sir.

Q. Now, you had come to that point where the negotiations demanded that you either fish or cut bait? A. Yes, sir.

Q. You had to decide to pay the money or decide not to pay the money? A. Yes, sir.

Q. Now, you had gone along instructing Mr. Johnson not to antagonize Mr. Wood but to tow him along. You realized the importance, you said, of this first contract? A. Yes.

Q. Now, then, what was your particular attitude toward your fellow directors not only at the DuQuesne meeting but following that at your meeting? I do not say how you wanted to vote or how you did not want to vote — what was your attitude or what

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was your sentiments expressed to them as to the importance of doing something tangible to land this contract? A. I refrained absolutely from making any recommendation as to what our conduct should be.

Examination resumed by Mr. Lewis:

Q. And did you subsequently lose your position for that reason? A. For that reason, no, sir.

Examination by Chairman Thompson:

Q. Now, you told us that all these directors would have voted no, in your judgment? A. I think they would.

Q. As to whether you would turn this over, to pay Wood this $5,000? A. Yes.

Q. And you said you would resign rather than do it? A. Yes.

Q. Now, tell me what on earth was the necessity of a directors' meeting if you would do that? A. Because the directors had to decide it.

Q. Why call a directors' meeting when you knew they would not vote for it? A. Because they would have been assuming a responsibility I could not assume.

Q. A responsibility to commit a crime? A. It would not have been fair to assume the responsibility.

Examination by Senator Lawson:

Q. Do you want this Committee to labor under the impression that you were discharged from your position as president of this company for the audacity of placing this matter up to the board of directors, that is the inference? A. Well, the board of directors or those that were there, or at least some of them, were very angry and indignant indeed that such a negotiation should have been had, very angry and very indignant, and that was the whole thing.

Q. And is that the reason they discharged you? A. Yes, sir.

Q. Colonel, who negotiated the contract with the Interborough for this system that you spoke about a few moments ago? A. I did.

Q. Was that contract approved by the Public Service Commission? A. No, sir. There was no Public Service Commission in existence. It was the Rapid Transit Railway Commission.

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Q. Did they have anything to do with disapproving or approving it? A. I don't think they had, sir. No, I don't think so. The contract was signed between us and the Interborough by Mr. O'Brien — E. P. O'Brien from St. Louis, who was then president of this Interborough Company.

Q. You carried on all the negotiations with the Interborough? A. Yes, sir.

Examination by Chairman Thompson:

Q. What was that, the speed control? A. That was the patent signaling system in the Interborough, the whole system of signaling and interlocking.

Q. Is that the same thing that the General had with the Fourth Avenue — same patent? A. No.

Q. It is a different patent? A. Quite another thing.

Examination by Senator Lawson:

Q. Colonel, who did you have dealings with in the B. R. T. on any of these contracts? A. In the B. R. T.?

Examination by Mr. Lewis:

Q. The General Municipal Railway Corporation?

Examination by Mr. Lawson:

Q. It is now called the New York Municipal? A. Now, what transaction do you have in mind at this moment?

Q. Any transaction you may have had with them? A. With regard to signals?

Q. Yes. A. Those transactions were carried on between our sales agents here in New York, the engineers and purchasing agents of the Brooklyn Rapid Transit. There were no big contracts executed between the company.

Q. But what particular individual of the New York Municipal Railway? A. No one of the New York Municipal Railway.

Q. Well, of the Brooklyn Rapid Transit? A. The purchasing agent's name Van Cott, is or was at that time, I think so, and the chief engineer, I don't remember who the chief engineer was at

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that time. But, as I say, there were no big transactions carried on at that time.

Chairman Thompson.— If there is nothing further, we will suspend until 2:30, and the witnesses are excused until that time.

AFTER RECESS

Senator Towner acting as Chairman.

Senator Towner.— The Committee will come to order. Colonel Prout recalled to the stand.

Examination by Mr. Lewis:

Q. Colonel Prout, are you acquainted with any of the members of the Commission? A. Of this Commission?

Q. Of the Public Service Commission? A. No, sir.

Q. Ever have any acquaintance with any of them? A. No, sir.

Q. Ever meet Commissioner Williams? A. No, sir.

Q. Ever have any transactions with the Brooklyn Rapid Transit during the time that Commissioner Williams was acting as its counsel, that you know of or do you recall? A. No, sir, I do not recall anything of that sort. The only Williams whom I know of in connection with the Brooklyn Rapid Transit is Colonel Williams.

Q. President of the company? A. Yes, sir.

Q. Did you ever have any acquaintance with Judge McCall? A. Never.

Q. Commissioner Cram? A. No, sir.

Q. Did you ever know Commissioner Maltbie? A. Yes. I met Commissioner Maltbie once — spent an evening with him at Pittsburgh once.

Q. When was that? A. It is quite a number of years ago. He was out there with Commissioner Wilcox and perhaps somebody else to look into something or other that the Westinghouse Air Brakes had to show them, and we dined together that evening at the DuQuesne Club, and that's the only time I ever met Mr. Maltbie.

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Q. Were you spending your time at the office in New York during the time that these hearings were being conducted? A. I was back and forth all the while, between New York and Pittsburgh. I spent probably half my time at each place, coming and going.

Q. And you think you have told us of the only occasion that you ever met Commissioner Wood? A. I am absolutely certain of it, sir.

Q. Commissioner Wood seems to convey the impression by his testimony that he had more than one meeting with you — perhaps he does not make the statement in so many words? A. Possibly if you could find just what he does say it might bring something to my mind, but I have absolutely no recollection of any other meeting with him than the one of which I have already told you.

Q. Commissioner Wood on page 2225 of the record was asked, "Don't you remember Mr. Prout and Mr. Johnson were discharged from the services of the Union Signal Company before the decision was rendered? A. I don't remember that.

"Q. You know Johnson? A. Yes, sir.

"Q. And Prout? A. Yes, sir.

"Q. You knew them well enough to get $1,500 for this little service which you performed? A. That is not knowing them well.

"Q. You knew them well enough to get $1,500. A. I did business with them," indicating that he had met you, it would seem to me, more than once. Now, Colonel, I have prepared a series of questions which I am going to ask you, and I have tried to prepare them in such a form that they could be answered either by yes or no, and of course if you are unwilling to answer them in that way, you may of course decline to answer them, but I feel that I ought to ask these questions of you, and, in fact, the members of the Committee directed that they be asked in this form, and they desire that they be answered without discussion or explanation. The first question is this: Is it not true that at informal conferences between you and other directors you were told of the Union Switch and Signal — you were told either in word or in substance that the matter of the contract must be accomplished without a meeting of the board of directors of that company? A. No, sir, I recollect no such case.

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Q. Were you not told either in word or in substance that the Union Switch and Signal Company maintained a selling organization at large expense, and that it was the business of that organization to get the business without consulting its directors? A. No, sir, I remember of no such statement.

Q. Was anything like that in substance — was anything said in substance like what I have read? A. No, sir, I recollect no conversation conveying any such.

Q. Is it not true that they told you in words or in substance before the meeting of the board of directors that if a meeting were held the directors would refuse to authorize payment to Wood? A. I don't remember having been told that, sir.

Q. Either in words or in substance? A. No, sir.

Q. Was it told to you by any one of the several directors of the company? A. Not that I remember.

Q. Is it not true that you were told either in word or in substance that if there should be a failure to obtain the Center street loop contract you and Mr. Johnson would be discharged or compelled to resign? A. Absolutely not.

Q. Did not the directors or some one of them tell you that it was necessary to land the Center street loop contract at whatever cost in order that the company might be in a better position to obtain the larger contract later? A. Never.

Q. Is it not a fact that you knew that the directors of the company expected you and Johnson to obtain this contract without burdening them to any degree whatever with responsibility or the action necessary to obtain, that the contract might be obtained? A. No, sir.

Q. Is it not true that you were forced to resign because of the failure to obtain the contract? A. No, sir, that is not true.

Q. Will you give us for the record your understanding of the reasons for your resignation being demanded? A. The immediate and overwhelming reason was that a majority of those present at that meeting felt very much outraged and very indignant that such negotiations should have been had with an official — with a public officer.

Q. But according to your testimony and according to the testimoney of Mr. Johnson, there had not been any negotiations? A. Why negotiations — what I have described to you — relations.

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Q. Well, they had no information on the subject except what you and Mr. Johnson conveyed to them? A. That we conveyed to them, there at that meeting.

Q. And that information was limited, was it not, to a statement by you that Commissioner Wood had said to Mr. Johnson that he ought to have $5,000 for his influence? A. Essentially that was it, yes.

Q. And for the reason that you conveyed to the board of directors the information that Mr. Johnson had asked for a $5,000 payment in exchange for his influence, and for no reason you were compelled to resign? A. No, sir, I will not say that. They felt that this was a dangerous sort of relations to have opened up.

Q. But you were not responsible for any relations that had been opened up? A. No, sir.

Q. Except to convey the information that the request had been made? A. Yes.

Q. Mr. Johnson was not responsible except to convey the information that a request for payment had been made? A. Yes.

Q. And for the mere conveying of that information to the board of directors both you and Mr. Johnson were forced to resign, is that your testimony? A. Yes, sir.

Q. And no other reasons? A. Well, there were reasons for which had made various members of that group who were there dissatisfied with my administration. There were other reasons that had made them dissatisfied with my administration.

Q. How long had these other reasons existed? A. It had been intimated to me — well, it had been said to me quite plainly by two or three of them that if we did not — if we were not more diligent and successful in getting business the Union Switch and Signal Company would not for a great while be the premier company in the signal business, and there was considerable dissatisfaction on the part —

Q. Who said that to you? A. I am sure Mr. Rosenwald said that to me. I think it is more than likely that Mr. Levinson said it to me. I know that intimation came to me a number of times.

Q. Mr. Uptegraff say that to you? A. I wouldn't say that he ever did, no. I rather think he never did — I think not.

Q. How long prior to this transaction had intimations of that character? A. Oh, for a number of months.

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Q. Well, you were president for only three or four months? A. But I had been responsible for getting the business of the company for eleven years, and in the meantime our competitors had been increasing in power and prosperity in a rather alarming ratio, and there were certain members of the board of directors who were dissatisfied. They did not think that I was handling the business with sufficient ability to keep the leadership which we have. That of course was a contributing cause to this whole thing.

Senator Lawson.— Had the directors, Colonel, ever made any statement with reference to Mr. Johnson's dilatoriness in securing additional business in the same respect?

Mr. Prout.— No, I think not.

Examination resumed by Mr. Lewis:

Q. Mr. Uptegraff was elected to succeed you, was he not? A. Yes, sir.

Q. What was Mr. Uptegraff's business prior to his election to the presidency? A. The business which had absorbed much the greater part of his time and strength was the handling of the affairs of Mr. George Westinghouse. He had been for thirty years with Mr. George Westinghouse.

Q. Had he any peculiar qualifications for presidency of this company? A. I do not think he had.

Q. Had he had any experience as a selling agent or in charge of sales? A. No, sir.

Q. Did he know the detail of the business? A. No, sir.

Q. Was he an engineer of any experience? A. No, sir.

Q. And still he was elected to succeed you? A. He was.

Q. Who had been in charge of the business for fourteen years? A. Eleven years.

Q. On the theory that he would be able to accomplish results which you had failed to accomplish? A. Yes, sir.

Q. And at a salary equal to or greater than yours? A. The same.

Q. The same salary, and is still the president of the company? A. Yes, sir.

Q. At the same salary that you were drawing? A. I don't know that, sir.

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Q. I have Mr. Uptegraff's testimony — by the way, have you read it? A. Very superficially indeed, sir.

Q. I think in Mr. Uptegraff's testimony he stated that the day before the meeting was held three of the directors were together and determined to demand your resignation and the resignation of Mr. Johnson, did you know of that? A. This is the first knowledge that I have of that.

Q. Perhaps it was not in Mr. Uptegraff's — it may have been in Levinson's — have you read Mr. Levinson's testimony? A. Superficially, yes, not carefully.

Q. Was there ever a check drawn on that subject for payment under that arrangement, Colonel Prout? A. What arrangement?

Q. To comply with Commissioner Wood's suggestion? A. I don't know of any, no.

Q. Was the treasurer ever asked to sign any such check? A. I don't know that he was.

Q. Mr. Uptegraff ever ask you to countersign any such check? A. I don't know that he has, sir.

Q. Did you hear of any check being drawn for that payment? A. Not that I remember.

Q. Mr. Levinson says in his testimony referring to you and to Mr. Johnson, "They seemed to think more of making their word good than they did of the heinousness of bribing a public official — they insisted because they wanted to make their word good," what do you say to that? A. That is a very wicked and unjust assertion.

Q. You say it was a wicked and unjust statement — is it true? A. No, sir.

Q. Mr. Levinson says, referring to the promise which he alleged was made, "That was Johnson's promise, not Prout's, I assume. A. Johnson's promise, but the Colonel knew all about it and had co-operated with Johnson in this dealing with Wood." Is that true? A. I have never authorized Mr. Johnson to make such a promise and I don't know that he ever did make any such a specified and definite promise of that sort.

Q. Again Mr. Levinson says, "My impression was that the negotiations were conducted by Johnson personally, but that Colonel Prout knew all about it concurrently." It is true, is it not,

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Colonel Prout, that the company maintained an expensive sales organization? A. It did.

Q. It is true that the company's business was falling off? A. No, sir.

Q. Had there been any such shrinkage in the business of the company as to warrant the statements made by any director that the company was likely to lose its premier position? A. On the contrary, the prosperity of the company had been very great and steadily growing.

Q. It was a profitable business, was it not? A. Highly.

Examination by Senator Lawson:

Q. Well, if such is the case, why were these directors dissatisfied with your regime for some time prior to the action they took in relieving you of the presidency? A. Because they felt that the other companies were coming up on us too fast. We had a splendid business and were making money, but the other companies were coming up towards our level fast.

Q. It was not because of any decline in the business of the Union Switch and Signal Company? A. Oh, no, sir.

By Mr. Feinberg:

Q. Your characterization of the charge being wicked and unjust is founded upon your distinct recollection that such a thing did not occur? A. Surely.

Q. And upon that point your memory is very clear and distinct? A. Very and perfectly.

Examination resumed by Mr. Lewis:

Q. You were a stockholder of the company, I assume? A. I am not.

Q. You were? A. Yes, sir, I was.

Q. You are not now? A. No, sir.

Q. I do not find the statement that I thought was here with reference to the determination of the day before to ask you for your resignation? A. I never heard of that.

Q. It was not quite in that form, although I think it is here in substance in Mr. Levinson's testimony. Colonel, have you told this Committee all that you know on the subject of this Wood

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transaction? A. Honestly, sir, I can say that I believe that I have. I have tried to answer your questions as clearly as I could and as fully as I could.

Q. You have had a good deal of experience on the witness stand? A. Practically none.

Q. None at all? A. Practically none. I think this is the fourth time in my life that I ever acted as a witness.

Q. You recognize the seriousness of this matter from the point of view of the public interest, do you? A. I do, sir, thoroughly.

Q. And have you contributed as a good citizen as fully as you are able towards clearing up the transaction by your testimony here? A. I have tried to, yes, sir.

Q. Did you appreciate the fact before that meeting was held that you were likely to lose your position that day? A. No, sir. It was absolutely unexpected to me.

Q. Came as a surprise, did it? A. Absolutely, yes, sir.

Q. But there had been suggestions prior to that time that you would be likely to be called upon to resign? A. No, sir, not to me. Nothing that I had ever heard.

Q. I understood that it had been suggested and intimated to you? A. No, sir. What I said was that there had been expressions of dissatisfaction with the fact that certain of our competitors were coming up too fast.

Q. Well, was there anything said indicating a purpose to hold you or the sales organization responsible for that condition? A. I as the executive head was bound to be held responsible.

Q. Well, was anything said on the subject? A. Nothing specific, I should say. I can think of nothing specific.

Q. Was complaint made to you of your inability to maintain the relative position of the Union Switch and Signal Company? A. Nothing more definite, sir, than that I have already said to you.

Q. Had there been any fault found with Mr. Johnson's activities or lack of activity prior to this time? A. No, sir.

Q. He had been a successful salesman? A. Very.

Q. And he was drawing a very substantial compensation from the treasury of the company? A. A handsome salary.

Q. And do you mean that this Committee should understand that it is your opinion that for the sole reason that Mr. Johnson

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transmitted to you and you transmitted to the board of directors a statement made by Mr. Wood to Mr. Johnson that he thought that his influence was worth $5,000, for that reason only, both you and Mr. Johnson were deprived of your positions with the company? A. I have told you, sir, that there was a group of the directors who felt — had expressed their dissatisfaction.

Q. But never to the extent that they expected you to resign or Mr. Johnson to resign? A. No.

Q. And the dissatisfaction you have not stated extended in any way to Mr. Johnson, did it? A. No, not at all, except that he was my appointee.

Q. And it comes down does it not to the question as I stated it, that for the sole reason that Commissioner Wood suggested to Mr. Johnson, that he thought his influence was worth $5,000 and for the reason that Mr. Johnson transmitted that information to you and you in turn to the board, both you and Mr. Johnson lost your positions? A. I have told you of contributing causes leading up to that; that there was a feeling of dissatisfaction with my administration on the part of certain members and this Wood incident came as the culmination.

Q. And that is the explanation you want the record to carry as to your understanding of the reasons why you and Mr. Johnson were dismissed? A. Yes.

By Mr. Feinberg:

Q. Do you regard it as a pretext for your discharge? A. Largely so, yes.

By Senator Lawson:

Q. Well, Colonel, let us assume for the sake of argument the causes of dissatisfaction which you state were in the minds of certain directors. If this Wood incident had never arisen and your conduct had secured the loop contract, are we to assume that you would still be the president of the Union Switch and Signal Company to-day. A. I can make no guess as to that, sir.

Q. Well, it would not be the sole contributing force of the dissatisfaction of that group of directors that would have caused you to sever your connections with the company, would it? A. How is that?

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By Senator Lawson:

Q. It would not be the sole contributing cause of your severing your connection with the company owing to the dissatisfaction of this certain group of directors, if this other incident had not arisen? A. I cannot tell what other fault they would have found with me or my administration.

Q. How much in your opinion, how much importance do you assign to the dissatisfaction on the part of the directors that you speak of? A. Well, I think that it was a very important thing with them, with that group of directors.

Q. More important than any dissatisfaction with them as regards the advancement made by your competitors, is that it? A. Yes — you mean the Wood incident?

Q. Yes. A. More important than that?

Q. Yes. A. I would not attempt to give relative weight to the thing.

Q. Well now have you refreshed your recollection since you were on the stand this morning as regards the testimony given in which it was stated that yourself, Mr. Uptegraff, Mr. Johnson had a conference the day before the directors met and took this action of how and what disposition might be made of this proposition made to your Mr. Johnson by Mr. Wood, have you refreshed your recollection in that respect? A. I have tried to remember the circumstances, the facts as stated by Mr. Johnson. I am quite certain that the suggestion was made there in that meeting such as Mr. Johnson describes.

Q. Now who was present at that meeting? A. Mr. Johnson and Mr. Uptegraff and myself.

Q. And what was the suggestion made then? A. The suggestion relative to paying such a payment and charging it up to expense account.

Q. To Mr. Johnson's expense account? A. Yes, sir.

Q. And do you remember who made that suggestion? A. Why by exclusion it could have been no other than Mr. Uptegraff, because I did not and Mr. Johnson did not.

Q. You had asked Mr. Uptegraff as to what his idea was as to how this difficulty could be overcome, had you? A. Some of us had, yes. Whether it was I or Mr. Johnson, I cannot say.

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Q. And his suggestion was that $5,000 might be paid to Mr. Wood and add it to Mr. Johnson's expense account? A. That that would be a way in which such a transaction could be carried out. Will you permit me, however, to add that that does not mean that either one of us, either Mr. Uptegraff or I expected that we would come to the point where such payment would have to be made. We did not know whether we would or not.

Q. I understand that. A. I wanted that to be in the record.

Q. But I understand from your testimony and the testimony of Mr. Johnson that both of you had asked your directors or you had asked Mr. Uptegraff in particular how this might be accomplished? A. Yes, sir.

Q. And in reply Mr. Uptegraff said that it might be paid and added to Mr. Johnson's expense account? A. Yes.

Q. That is true, is it? A. Yes, I think that is substantially true.

Q. What did Mr. Johnson say on that subject at that time, Colonel? A. Why it is my recollection that Mr. Johnson's statement in his testimony is correct, namely, that he would rather resign than do business in that way, than to pad his expense account; that he had never padded his expense and would not.

Examination by Mr. Feinberg:

Q. Colonel, your loyalty to your immediate superiors, dictated to you that you submit this proposition of paying $5,000 to Commissioner Wood, did it not? A. I regarded it as part of my duty to the Union Switch and Signal that the whole situation should be placed before the board.

Q. At that time you had no grounds for belief that your placing this proposition of Commissioner Woods before them would be received by them as pernicious activity on your part? A. I could not suppose that it would be considered an unpardonable thing to have such dealings, such dealings as would keep a finger on him.

Examination by Senator Lawson:

Q. Well, Colonel, let me say this: There was not any question of loyalty, was not any other question but that of business, and

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that of obtaining a big contract, that of obtaining the biggest contract that has been let to a company, in that Fourth Avenue Subway, it arose in your mind, and it was uppermost in your mind when Mr. Johnson first broached this subject to you, that Commissioner Wood wanted five thousand dollars, is that true? A. Yes.

Q. Now, then, the first time that any question came up as to loyalty or otherwise, was when the question came up of power to pay out this money? A. No. The question of whether we should pay it out or not.

Q. Yes, but up until that time, Mr. Johnson had conducted these negotiations with Wood? A. Yes.

Q. So that any question of loyalty was superseded entirely by a straight-out business proposition, as far as you were aware of, is that true? A. Yes.

At this point Senator Thompson takes the Chairmanship.

Examination by Chairman Thompson:

Q. Colonel, how long were you president of this concern? A. About four months.

Q. How long were you vice-president? A. Eleven years and two or three months.

Q. During that time, were you in charge of the finances during that time? A. Yes.

Q. All the time? A. That is during my vice-presidency — not as president.

Q. And you run the affairs of this corporation, you were the official authority, final authority? A. I had a president over me.

Q. But you never consulted him, did you? A. Very frequently, sir.

Q. Well, what for, in the organization of the concern during all that time it operated through you as the head, that was the practical situation? A. Yes, sir.

Q. Now, what change did it make when Uptegraff was made vice-president in charge of finances and you were made president? What was the change in your authority? A. All of the financial matters were taken out of my immediate jurisdiction.

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Q. But matters of policy were determined by you? A. Except that having Mr. Uptegraff there as a vigorous, strong experienced business man in that very important position in the company, naturally I talked with him a great deal more than I had ever done before.

Q. Well, he had a check on you, of course, because if you developed a policy or plan and wanted to carry it out, you had to have the vice-president in charge of finances furnish you the money? A. Surely.

Q. And that was the relationship that he stood in? A. Yes, sir.

Q. You developed the plan? A. Yes, sir.

Q. And developed the policy? A. Yes, sir.

Q. And you could carry them out, provided he could give you the money? A. Yes, sir.

Q. And that is the truth? A. Yes, sir.

Q. And that was the condition of affairs in May, 1914? A. Yes, sir.

Q. So that was the reason why Johnson, when he had this transaction with Wood, notified you? A. Surely.

Q. And if you followed the custom, why, you would develop the policy and call upon Mr. Uptegraff for the money? A. Yes.

Q. Now, well, that is exactly what was done, isn't it? A. Yes.

Q. Now, your policy was at that time, wasn't it, to get this business? A. Surely.

Q. It was the most — that was the biggest contract, the biggest signal contract that had ever come along in your experience? A. I suppose so. I hesitate a little bit, because as a matter of fact, the contract which we executed for the Pennsylvania Terminal came pretty close — that was a million three hundred thousand.

Q. And you wanted it? A. Yes, sir.

Q. And your policy was to get it as president of the company? A. Yes, sir.

Q. And you would not let a matter of five thousand dollars stand in the way? A. I would not let a matter of five thousand dollars stand in the way, but I would let a matter of corrupting a public official stand in the way.

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Q. Now let us see — if Mr. Johnson would go ahead and corrupt the public official without making you acquainted with the legal knowledge that he had, you would let him do it, wouldn't you? A. No, sir; how could I stop him if I did not know it?

Q. That was the attitude of every one of the other directors of the concern, wasn't it? A. If I did not know it.

Q. Well, if you did not have the legal knowledge of it? A. I should be very likely to know it, and I should be very much incensed if I did not know it.

Q. Well, you did know what Johnson spent his money for? A. Yes.

Q. You as executive head were supposed to know? A. Yes, sir.

Q. And you were supposed to go ahead and get this business? A. Yes, sir.

Q. And you were supposed to keep your directors in the position where they got the business, but if there was anything wrong in getting the business, that the directors should not know that, isn't that the fact? A. No, sir.

Q. That is not the fact? A. No, sir; there never was any understanding of that sort whatever, either expressed or implied.

Q. Well, you say you were very careful in a matter of this kind; in this matter you were very careful? A. Yes.

Q. And you say Mr. Uptegraff has testified falsely before this Commission, when he said that you and Mr. Johnson were insistent when he said this money should be paid to Wood? A. Did Mr. Uptegraff testify to that?

Q. Yes. A. Then I am sure that he was in error.

Q. Then he testified falsely? A. Well, I am sure he was in error if he testified to that; that we were insistent that the money should be paid to Mr. Wood.

Q. Now, did Mr. Uptegraff want your job? A. Yes, he did.

Q. Is that what brought this about? A. I think that has more to do with it than anything else.

Q. What was your salary at that time? A. Oh, I have no idea at all, sir. Mr. Uptegraff, as I told you — he was very — very much concerned in the very important way with the affairs of Mr. George Westinghouse.

Q. I know, but how much did your company pay him for being

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vice-president in charge of finances? A. After he came in as vice-president, I think he got ten thousand dollars.

Q. And do you think he wanted twenty-five? A. Yes.

Q. You think that is what brought about this whole difficulty? A. I think he had much more ambitious schemes than that.

Q. What were they? A. Well, he would like to get hold of the presidency of the Union Switch and Signal, not for the sake of the salary, for the commission, but to go ahead, and build up a tremendous great company, and make himself a very important business man.

Q. How was he going at it to build that up? A. He thought he could do better than I did.

Q. In what way, how? A. Why, there are a very great many things to be considered in building up an organization.

Q. You have got to get business? A. Not only to get business, but you have got to manufacture economically, you have got to have a highly efficient engineering staff, you have got to do a whole lot of things. It is not merely enough to get business.

Q. Before this directors' meeting was called, did you suspect Uptegraff wanted your place? A. I did.

Q. How long? A. For months.

Q. How many months? A. I should say, as a guess, five or six months, probably.

Q. So that when this check came, or when this check was refused by Uptegraff, you knew then, or you suspected then that Uptegraff wanted your job? A. I suspected—I am afraid, Mr. Senator, that you are leading me into a field of speculation. These are surmises that I have in my mind. I do not know them as facts, and I guess perhaps it would be just as well to avoid going into a mere field of speculation any further.

Q. Do you mean that you decline to answer? A. Not at all, sir. I do not think it is quite fair or just to do that.

Q. Now, you believe that the speculations that you are now indulging in, subsequent facts proved that you were correct, didn't they? A. I believe that; yes, sir.

Q. So that now— A. I am not testifying to a fact—I am testifying merely to a belief.

Q. When you got notification from Johnson that Mr. Wood, a Public Service Commissioner, wanted five thousand dollars,

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you also in your mind knew that you could not get this five thousand dollars without Uptegraff signing for it, didn't you? A. Quite so.

Q. And you also had in mind at that time that Uptegraff was laying for your job? A. Yes, sir.

Q. And isn't that the reason why this particular transaction followed the course through the directors' meeting that it did? A. Oh, I have felt in my mind that that was a very important contributory cause; that is what I felt.

Q. You wanted a directors' meeting, didn't you? A. Very much indeed, sir.

Q. Because you wanted to show Uptegraff that you were the president of the concern? A. Oh, not at all.

Q. You did not have an idea that the directors' meeting would throw you at the time it was called? A. Not at all.

Q. Or Johnson didn't have? A. Not at all.

Q. If there had been, you would not have wanted a directors' meeting? A. It would seem like a rather gratuitous thing to call a meeting of the board of directors to get discharged.

Q. Now, Uptegraff also had an idea if he had a directors' meeting, that he could get your job? A. Yes, sir.

Q. That's the only way he could get it? A. Yes, sir.

Q. And the only way he could get from the directors' meeting, was to refuse to sign this check? A. Oh, no, sir. I have not said one word—I hope I have not said one word that if he had signed that check that it would have been taken and turned over to Mr. Wood.

Q. Do you think anybody believes that? A. Well, I believe it. I don't know whether you do or not.

Q. Now, who insisted on this directors' meeting? A. I presume I insisted on it as strongly as anybody. Mr. Uptegraff, I think, testified that it was called at the request of Mr. Johnson, but I think that he is at least half in error in that.

Examination by Senator Lawson:

Q. Well, did Mr. Uptegraff insist on it being called, Colonel? A. No, he did not insist. He did not object. It was a matter of ordinary business routine and policy.

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Q. In other words, both you and Mr. Uptegraff and Mr. Johnson all wanted a directors' meeting? A. Absolutely, yes, sir.

Examination by Chairman Thompson:

Q. You say you insisted on the meeting; did Mr. Johnson also insist on the meeting? A. Why, he was very anxious we should have one, yes, sir.

Q. And Mr. Uptegraff acquiesced in it? A. Surely.

Q. Now, who had the say when the meeting was called? A. I.

Q. You fixed the day of the meeting? A. Yes.

Q. Now, who was it that found fault, Senator Lawson asks me, because some of the directors were in Europe? A. I found fault — I won't say I found fault, but I regretted very much that the directors were not present at this meeting.

Q. Why didn't you call it at a time when they would be there? A. Because there was no knowing. The war had begun, and they were held up in London, and there was no knowing when they would get back.

Q. If anything was done with Wood, it had to be done quickly? A. If anything was done with anything, it had to be done quickly.

Q. If anything was done with this particular thing? A. The policy of the company had to be decided.

Q. And it was talked before the board of directors—you still call it a policy? A. Well, what we should do in this case.

Q. Now, when did you call this meeting, when was the date of the call? A. The meeting was arranged by telephone.

Q. When, what date? A. I think it was the afternoon of the 14th probably; I would not swear to that. But it was probably the 14th.

Q. Did you know there was going to be a war in Europe at that time, the 14th of July? A. Well, now, I thought—my impression was that those men were held up by the war.

Q. If you knew by that time, you were quite a little in advance of other folks? A. I admit I am a little off in my chronology. Their return was very uncertain — held up in business in London and Paris. What confused me is that later they were, in the month of August, held up.

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Q. Now, when were these bids submitted for these Center street loops — along in April or March, weren't they? A. I can't say, sir, when they were submitted.

Q. The bids were pending in May, were they not — you are sure about that? A. No, I am not sure about that.

Q. Well, it is a fact from the record? A. Well, you probably know better than I do. I am not sure about it.

Q. And you got the letter directed to you from Johnson, dated on April 30th, in which Johnson said in substance, that he wanted you to hurry with the remittance of fifteen hundred dollars to be paid to Mr. Wood in the Kansas City and Clay County matter? A. Yes.

Q. You got that? A. I got it because it was read out of the records here, and unquestionably I must have received it, but I do not remember the circumstances.

Q. You say you met Wood once in reference to it? A. Yes, sir.

Q. Just what did Wood do about that; just what did Wood do to earn that? A. The fifteen hundred dollars?

Q. Yes. A. Why, he brought to us knowledge that there was this signalling contract to be let in Kansas, the Kansas City, or whatever it is.

Q. He brought that to your knowledge — did he do anything else? A. He brought that to our knowledge, and he brought us into communication with the people in New York who had control of the letting.

Q. You say he did — how did he go about it, to do that? A. Well, I assume that he took Mr. Johnson and introduced him.

Q. Do you know whether he did or not? A. No, I do not know that positively. I would not swear to that.

Q. Do you know anything else that he did? A. No.

Q. Well, then, do you think he earned fifteen hundred dollars in that matter? A. Well, that would be a matter of opinion.

Q. Well, what is your opinion? A. I should say yes — fifteen hundred dollars was, as I remember the circumstances — was not an unreasonable commission to be paid.

Q. You think he earned it? A. Yes.

Q. Legitimately? A. Yes. It was probably a big commission.

Q. And you think he earned it? A. Yes.

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Q. Now, will you tell me why he gave five hundred dollars of it back? A. I don't know, sir.

Q. You cannot conceive of any reason for that? A. I can conceive — I remember he did, but I don't know why.

Q. Don't you think he thought the whole fifteen hundred dollars was a gratuity, and he wanted Johnson to have five hundred of it? A. I don't think that, no, sir.

Q. Don't you know that the five hundred dollars was given by him to Johnson personally? A. Yes.

Q. And paid over in cash? A. Yes.

Q. Why do you suppose he would do such a thing as that? A. I can't imagine.

Q. It is not hardly consistent with a man who thought he had earned fifteen hundred dollars legitimately? A. I can't imagine.

Q. I say, do you think it is consistent with having legitimately earned fifteen hundred dollars? A. It seems inconsistent; yes, sir.

Q. Inconsistent for him to give five hundred back to Johnson? A. Why, I don't know what his relations with Johnson were with regard to that.

Q. Now, a man in your position, drawing a salary that you had, the experience you had from this transaction, you pretty nearly got Wood's measure along about the 6th of May, 1914, when you paid him this money? A. No, not at all. I can't say, sir, that I regarded it as a perfectly legitimate brokerage transaction. Here was this man who came along and put us in contact with a job that we knew nothing about and we went off and got it, just the same as if he helped you to sell your house.

Q. I say you did not take it into account his walking in and handing over five hundred dollars in cash? A. No. That would be idle speculation to go into that.

Q. Now, during your eleven years as president of this company, has that been the character of the transactions you have had? A. I think that transaction with Mr. Wood, and in fact I know it was uncommon in one particular, namely, his handing back part of his commission.

Q. But the rest of it was a perfectly usual transaction? A. Why, it did not happen very often — very seldom.

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Q. The payment of sums of money like this, without any accounting on the books of your concern as to what the labor was performed for? A. But the vouchers for services, and if any explanation is necessary, the explanation can be made.

Q. Well, there was not any explanation made to you beyond what you told? A. No.

Q. And you regarded that as a perfectly usual transaction? A. I regarded it as an entirely proper transaction.

Q. Did not think it was necessary to take it to the board of directors? A. No, sir.

Q. You simply slid the check through to him? A. Yes.

Q. And don't your company and your sales agent, in dealing with these matters, don't you keep an account of the fact that there is a Public Service Commission? A. Why, this had nothing to do with the Public Service Commission, you know.

Q. I say don't you keep account pretty well, of the fact that there is a Public Service Commission? A. Surely.

Q. And that the Public Service Commission has to be consulted in matters that are important to your company? A. Yes.

Q. And if a man's term runs out, aren't you interested in the appointment of his successor, to find out who he is and what he is? A. I never knew of a case where we took any pains whatever to find out the antecedents of a man.

Q. Do you know who Commissioner Wood succeeded? A. No, sir.

Q. It was Commissioner Eustis — and you did not know his time had expired on the first of February and appointment of his successor had been held up? A. No, sir.

Q. Can you tell me of any reason for the haste which Johnson expressed to you in sending the fifteen hundred dollars? A. I know of no reason whatever why he should have been in haste.

Q. There never had been any haste in these matters before that? A. Very frequently.

Q. Do you know that thirteen days after this, that Mr. Wood was appointed by the Governor as a Public Service Commissioner? A. I accept your statement. I do not know what the date was of his appointment.

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Q. The 19th of May. This was on the 6th. Now, do you mean to say, Mr. Prout, that your people had no conferences with Commissioner Wood after this date and before the time when he took over the assignment of the contest between your company and the Federal Company, as to whether or not you should get the contract? A. I know of no such conference.

Q. Did you ever hear of one? A. No.

Q. Did any of your subordinates, or attorneys, or other people in your company ever advise you of one? A. Not that I know of. Not that I can remember.

Q. Who was authorized to make this application? A. What application?

Q. Did you know there was an application made on behalf of your company? A. For what, sir?

Q. For anything? A. An application?

Q. Yes. A. I do not quite understand what you mean.

Q. Did you know that there was a proceeding in the Public Service Commission in June, 1914, which would satisfy your company? A. Yes, there was a hearing there, I believe.

Q. What was it about? A. With regard to this — to the letting of this contract, or something of that sort. I don't remember distinctly what it was.

Q. You don't remember what it was? A. No.

Q. Well, as a matter of fact, to refresh your recollection, wasn't it a proceeding to try to get the contract away from the Federal whose bid was lower than yours? A. Yes, I think there was something of that, now.

Q. Now, do you know when that was instituted? A. I do not.

Q. Did you authorize the institution of that? A. Presumably I did.

Q. Do you remember anything about it? A. No.

Q. Who did you confer with about that? A. My recollection is entirely vague about that proceeding. Would have been no necessity for any conference with anybody.

Q. Why not? A. That is to say, if it was important that we should go before the Public Service Commission to try to get the award reversed, why it was a thing that the sales department with me could manage.

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Q. Well, that would come to you, wouldn't it? A. Surely so.

Q. A very important matter? A. Yes, it was an important matter.

Q. A matter affecting this large contract to which you had given a great deal of thought? A. Yes, sir.

Q. Then you must remember whom you deputized to handle that for you? A. Johnson handled it, and we were represented before the Commission by Mr. Bowling, an attorney here in New York, who went and made an argument.

Q. Mr. Johnson handled it? A. Mr. Johnson handled that — engaged Mr. Bowling.

Q. He handled the matter? A. Yes, sir.

Q. He provided the interference? A. Yes, sir.

Q. And did he report to you about it? A. Yes, sir, he made some verbal reports to me.

Q. Were you over in New York during that time? A. Why, I was coming and going, as I said before, constantly.

Q. Well, wasn't there conferences with Mr. Wood in relation to that? A. None that I ever heard of.

Q. Didn't the fact that Wood had gone on the Public Service Commission, and the fact that you knew him because of your Clay county deal, at least rather seem to justify a hope of success if you made this application to the Public Service Commission, and substitute your bid? A. No, sir; I am not prepared to say that, no. It was a perfectly legitimate proceeding that we should go before the Public Service Commission.

Q. And try to substitute the high bid for the low bid? A. Yes.

Q. Didn't your company take into account that it would be desirable to get the matter assigned to Commissioner Wood? A. To get what?

Q. To get this matter assigned to Commissioner Wood for determination and decision? A. No action of that sort was ever taken.

Q. Did you ever talk that over with anybody? A. No, I would think not. I don't know. I don't know that I ever did.

Q. But if anything was done in that regard, you would say it would be Johnson who did it, because he was here? A. Yes, sir.

Q. And he had charge of the proceeding? A. Yes.

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Q. Were you present at any time during this hearing? A. No.
Q. You did not attend the hearing? A. No.

Examination by Mr. Lewis:

Q. I want to read you Mr. Johnson's testimony, in reference to the payment of fifteen hundred dollars to Wood. He says:

> "I went to the National City Bank and met their representative to settle this matter, and when we got outside, I told Mr. Wood of the conversation, and I further told Colonel Prout of the conversation, and he says, 'It seems to me that Mr. Wood's representation on this thing is not going to do us a whole lot of good; I do not see where he gets in on this proposition to a very great extent; he apparently is not able to turn the contract over to us without a hard fight;' the upshot of it was it simmered down to paying Wood fifteen hundred dollars."

Is that true? A. Yes, sir.

Q. I say now, do you have that recollection that Wood honestly and actually earned the commission of fifteen hundred dollars at that time? A. Why, he may have earned fifteen hundred dollars, but not a larger amount.

Examination by Chairman Thompson:

Q. You think that was worth fifteen hundred? A. Yes, I think it was worth fifteen hundred dollars, if it could not have been brought to our attention for less.

Q. It is worth all he can get out of you? A. What the traffic will bear.

Chairman Thompson.— We will excuse you unless there is some statement you want to make of your own volition, and if there is, you may make it.

Mr. Prout.— No, sir.

ALFRED HOWARD RENSHAW, recalled.

Examination by Mr. Lewis:

Q. Mr. Renshaw, I think you have already testified that you are the president of the Federal Signal Company? A. Yes, sir.

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Q. And your company presented a bid for the contract for the construction of the Center street loop work, did you not? A. Yes, sir.

Q. And your company was awarded that work, if I recollect right? A. Yes, sir.

Q. And there were certain hearings in connection with that matter, were there not? A. Yes, sir.

Q. And did you attend them? A. Yes, sir.

Q. And who was representing your company before the commissioner upon those hearings? A. My attorneys were Kenyon and Kenyon. Mr. Eyre of their firm attended those hearings with me.

Q. Did you have an engineer or sales manager? A. Mr. John F. Cade was there, vice-president of the company.

Q. And upon those hearings the question was as to the validity of certain patents, as I understand? A. Yes, sir.

Q. And it was claimed that your company had not the right to construct the system, because of your not having patent protection, is that so? A. Well, it was because the other company claimed to own patents which I could not use and which were called for in the specifications.

Q. And was there litigation pending upon that question? A. Not at that time.

Q. Has there since been? A. There has.

Q. And in what court? A. In the District Court of Maine, Portland.

Q. United States District Court? A. United States District Court.

Q. What judge? A. Judge Matthew Hall.

Q. Has that litigation terminated, to decision? A. The decision was given last Tuesday in that case.

Q. And to what effect? A. In favor of my company and the Hall Switch and Signal Company, who together were the defendants.

Q. And the complainant in that litigation was —? A. The Union Switch and Signal Company.

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Examination by Chairman Thompson:

Q. That decision was to the effect that the patent was not of any value, wasn't that the idea? A. As I construe the decision, it declares the patent invalid.

Q. And that was the Struebel patent? A. Yes, sir.

Q. That was the fundamental patent owned by the Union Switch and Signal and General Railway Signal Company operating with the joint agreement for some years? A. Yes, sir.

Examination by Mr. Lewis:

Q. Now, did Commissioner Wood preside at those hearings? A. In the case of the Center street loop, there was two — I think he presided at both, and I know he did at one. The records would show.

Q. And subsequently there was a larger contract advertised, was there not? A. Yes, sir.

Q. And bids were solicited on that? A. Yes, sir.

Q. That was known as the Fourth Avenue, Brooklyn? A. Yes, sir.

Q. Was your company a bidder for that work? A. Yes, sir.

Q. Did you present a bid? A. Yes, sir.

Q. And what was the amount of your bid as compared with the other bids? A. When the bids were opened in public, the Hall Switch and Signal Company's bid was about two million and a half, I think. I can only give you approximate figures. The General Railway Signal Company's bid was about eighteen hundred thousand. The Union Switch and Signal Company's bid was about fifteen hundred and thirty thousand, and the Federal Signal Company's bid was slightly under fourteen hundred thousand.

Q. I have the record, Mr. Renshaw. Perhaps, if agreeable, I will read the record. The total lump sum prices of bids mentioned was as follows: Federal Signal Company, $1,395,917.00; Union Switch and Signal Company proposal A, $1,536,246.00; proposal B, $1,583,145.00. General Railway Signal Company, $1,812,654.00. Hall Switch & Signal Company, $2,656,651,00. Are those the figures as you recall them? A. Yes, sir; as near as I can recall them.

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Q. Was there a protest upon the patent situation filed with the Commission in connection with the approval of this contract? A. You mean this larger contract?

Q. Yes. A. I think there was, but I would have to depend upon the record for that, Mr. Lewis.

Q. Were you at the office of the Commission from time to time while this matter was pending? A. Yes, sir.

Q. And did you have occasion to see Commissioner Wood? A. I did not.

Q. Did you see him at any time at the office of the Commission? A. He spoke me one day in the lobby of the office, but I had never known him before that.

Q. Well, you knew him when he was speaking to you, did you? A. Yes, I knew who he was. Of course I had seen him at previous hearings.

Q. Will you tell us what he said? A. He said nothing more than "How do you do," or something to that effect.

Q. Did you see him on any other occasion? A. Never except at the hearings—public hearings.

Q. Was Mr. Cade there with you at the time? A. He was there with me, I think, on each occasion.

Q. Now, was there a time when Mr. Cade told you, after you and he had been there together, of the fact that Mr. Wood had had some talk with him on the subject of the award of this contract? A. Yes, sir.

Q. Will you tell us what Mr. Cade told you? A. He told me that Mr. Wood had asked him into his private office, and he told me—I can't give the words—but that Mr. Wood had given him every opportunity to make him a proposition. That is what he told me.

Q. Did he say that Commissioner Wood had asked him to submit a proposition? A. He did not.

Q. Did he repeat to you anything that Commissioner Wood had said to him? A. No.

Q. Can you repeat anything that Mr. Cade said to you? A. I could not repeat the language that he used, but I got the impression that Mr. Cade thought Mr. Wood had given him an opening to make him a proposition.

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Q. A proposition of a financial character, did you understand it to be? A. That was what I understood it to be.

Q. And for the purpose of influencing Commissioner Wood's official action? A. Well, there was nothing else pending at that time.

Q. And you understood it to be that was the purpose? A. That was my understanding, yes.

Q. And this matter of the approval of the award of the Fourth avenue contract, was the matter that was pending at that time? A. Yes, sir.

Q. And the matter on which you were present at the Commission? A. Yes, sir.

Q. And at a hearing upon that matter before Commissioner Wood? A. Yes, sir.

Q. Now, when did Mr. Cade tell you of this conversation that he had with Commissioner Wood? A. Well, it was probably very shortly after it occurred. I could not give the date. We had several meetings.

Q. And how soon with reference to the time the conversation took place? A. I imagine it was almost immediately, the next time he saw me.

Q. Did you leave the building together? A. I could not recollect that, because we were there together, I think, on more than one occasion. Perhaps three or four hearings were held, I think, and I am unable to differentiate one from the other.

Q. Well, did Mr. Cade tell you of this as soon as you and he got out of the building? A. If we were together.

Q. And if not? A. The first time he saw me.

Q. And before the determination of the questions pending before the Public Service Commission? A. Yes, sir.

Q. You did not get the contract, as I remember? A. No, sir.

Q. The award to the General Railway Signal Company was approved by the Public Service Commission? A. Yes, sir.

Q. And the contract was executed and entered into? A. Yes, sir.

Q. Subsequently, as I recall, your company made an application for a reconsideration and rehearing? A. Yes, sir.

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Q. And the argument was had before the Commission on that proposition? A. I know that there was. I was not there on that occasion.

Q. And do you know of your own knowledge of the disposition made by the Commission upon that application? A. I have never seen the record, but I was told that they had refused to reconsider.

Q. And do you know the vote by which the refusal was made? A. Only from the newspapers, which gave it at the time.

Q. This resolution is already in evidence as a part of the record. I read from the notes of the meeting of the Commission:

> "Commissioner Cram made a motion that was duly seconded, that the foregoing resolution be adopted. Commissioner Cram made a motion that was duly seconded that all the bids submitted by the New York Municipal Railway Corporation or the Saitt Block signalling and interlocking be disapproved, and that the matter be referred back to the New York Municipal Railway Corporation, with the directions to obtain new bids, excepting, however, the award of a contract for the blocking and signalling and interlocking on the portion of the Broadway-Fourth avenue line affected by the bid. Chairman McCall made a motion, which was duly seconded, that the application of the New York Municipal Railway Corporation for the approval of the award of the contract to the General Railway Signal Company be denied, and that the corporation be advised that the Commission recommended the award of the contract to the lowest bidder, as the bids were originally opened. The votes were then taken upon the motion of Chairman McCall, which was as follows: Ayes, Commissioners McCall and Maltbie. Noes, Commissioners Williams, Cram and Wood. Motion lost. A vote was then taken upon the motion of Commissioner Cram, which was as follows: Ayes, Commissioners Maltbie and Cram. Noes, Commissioners McCall, Williams and Wood. Motion lost. The question then reverted to the motion of Commissioner Williams, that the resolution above set forth

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be adopted and the following vote was taken: Ayes, Commissioners Cram, Williams and Wood. Noes, McCall, Maltbie. Motion carried."

Q. Was there an occasion when anyone—have you been advised of an occasion when anyone called upon Mr. Cade in connection with this matter, Mr. Renshaw? A. Yes, sir.

Q. Will you tell us what you may of that subject? A. Mr. Cade advised Mr. Banks had asked him to call to see him, and Mr. Cade went to see Mr. Banks—at least Mr. Cade told me that he went to see Mr. Banks, and Mr. Banks practically made him the proposition that for a consideration he could get us the award of the Fourth avenue contract.

Q. When did this occur? A. This was subsequent to the interview reported to me by Mr. Cade between him and Commissioner Wood.

Q. And while the matter was still pending before the Commission? A. Yes, sir.

Q. And are you able to fix that date any more accurately? A. No, I don't think I could fix the date more accurately than to say it was subsequent to the first incident.

Q. Did Mr. Cade tell you how he received the request or the invitation from Mr. Banks to call upon him? A. He told me that Mr. Banks had telephoned and asked him to call.

Q. From New York to Albany? A. No.

Q. To the New York office? A. From our New York office.

Q. Mr. Cade was at the New York office? A. Mr. Cade's headquarters, our New York office.

Q. And did Mr. Cade tell you in the conversation that you had with him of anything that Mr. Banks may have said in connection with Commissioner Wood? A. Well, he told me that Mr. Banks was connected with Mr. Wood, and it would be through Mr. Wood that the influence would be brought to bear.

Q. I think that is all for to-night, Mr. Renshaw.

Chairman Thompson.— Just one question. Does this decision of this District Court in Maine affect the agreement between the

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Federal Company and the General Company, their working agreement?

Mr. Renshaw.— You mean between the Union and the General?

Chairman Thompson.— The Union and the General?

Mr. Renshaw.— Well, as I understand that agreement, the General Railway Signal Company is licensed by the Union Switch and Signal Company to use all the devices alleged to be covered by this patent, and one other patent. It is a general license, as I understand it. And under that agreement it is probably, and customary under such agreement that the Union Switch and Signal Company will be obliged to take an appeal to the highest court, which is the Circuit Court of Appeals, and if the opinion rendered in this decision is affirmed, then the General Company will be relieved of the payment of the royalties, as I understand it. I am giving you hearsay in this matter.

By Chairman Thompson:

Q. In other words, if it invalidated the patent, it would invalidate the agreement? A. Yes, sir.

Q. Do you know the Mr. Banks you have mentioned here? A. I do not know him.

Q. Is it the Mr. Banks that was connected with this Northwestern Construction Company? A. That is what I understand.

Q. William C. Banks? A. Yes.

At this time an adjournment was taken until Monday, December 20, 1915, at 11 o'clock, A. M.

DECEMBER 20, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order at 1:25 o'clock P. M., Chairman Thompson presiding.

Chairman Thompson.— The Committee will come to order. I apologize to this Committee for the fact that I happen to be Chairman of another Legislative Committee, which has been neglected

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by me, owing to the fact that I have given so much time to this, and this morning we had a meeting at the Biltmore, which I attended, so that accounts for the fact that there will be no session of this Committee this morning. We will suspend now until half past two, and there will be a session this afternoon.

All witnesses are directed to appear at 2.30, except Henry G. Prout, who, at his request, has been excused until to-morrow, at 11 o'clock.

Whereupon, a recess was taken to 2.30 o'clock P. M., at the same place.

AFTERNOON SESSION

The Committee was called to order at 3 o'clock P. M., Chairman Thompson presiding.

ALFRED H. RENSHAW, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Renshaw, did you communicate with any member of the Commission the information to which you testified before this Committee on Saturday last? A. I did.

Q. Will you tell us to whom? A. To Judge McCall.

Q. How soon after the event which you related happened? A. I couldn't state how soon, but it was very shortly thereafter.

Q. Within a day or two, or a few days? A. I think two, yes. Not over two or three days, I think, if as long as that. I had been in the habit of seeing Judge McCall in reference to this matter, in which I was very much interested, and was seeking his approval of our bid for the work, and I told him of the facts that I testified to here on Saturday.

Q. Do you remember what you said to Judge McCall? A. Well, I practically told him what I testified to here on Saturday.

Q. Will you repeat that, for the benefit of the record? A. Well, I told him that Commissioner Wood had practically given Mr. Cade an opportunity to give him a compensation for his influence. That was the pith of it, and that furthermore a Mr.

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Banks had asked Mr. Cade to go and see him, and that he had practically solicited a consideration for his influence and that of Commissioner Wood to get us the contract.

Q. Do you remember where you were when you had this conversation with Judge McCall? A. That was in his office.

Q. Public Service Commission rooms? A. Yes, sir, in the Public Service Commission rooms. Judge McCall expressed indignation, but no surprise, and he suggested that I take the information and make charges against Commissioner Wood to Governor Glynn. I did not do so, for the reason that it would be only one man's word against another, and with no other proof than the mere statements.

Q. Do you know whether charges ever were preferred or presented to the Governor against Commissioner Wood? A. I understood that charges were pending at that time before the Governor against Commissioner Wood, but I am unable to state that Judge McCall told me that, but he may have told me that, but I heard that, but I can't say from whom.

Q. Do you know what those charges related to? A. I don't.

Q. Did you ever make any investigation to ascertain the truth of the statement? A. I probably did make some efforts but I did not get any information and could not get any information about it.

Q. Have you told us all that you recall of the conversation that you had with Judge McCall? A. Yes, sir, that is practically all. Well, I had had a number of conversations with Judge McCall.

Q. At which this subject was discussed? A. Well, I think probably this may have been referred to, but at a subsequent conversation. I must have seen Judge McCall perhaps five or six times whilst this contract was pending, and Judge McCall had always expressed the opinion that the Commission would vote for us to have the contract if we were competent to perform it, and to give an adequate bond, in spite of the allegations that were made regarding patent matters at that time, that we were not qualified on account of not owning certain patents, to install the work.

Q. Did he say anything about your company being the low bidder? A. Yes, sir, that is the reason he gave why he thought

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we should be awarded the contract, and he stated that he didn't think, if those were the facts, that the Commission would vote against us. In fact, I think I saw him perhaps a very short time before the award was made, and he gave me the assurance then that the Commission would not vote to give it to a high bidder.

Q. Do you know anything about this patent situation relating to this speed control device? A. I know something about it, yes, sir.

Q. Will you tell us what information you have on that subject, Mr. Renshaw? A. Well, this system, known as the Simmens system, has been known I think, for quite a few years to signal engineers, but it has never made very much progress, nor was it considered by me as a suitable device for putting on an important railroad. I think it has been tried out on some trolley lines in the west.

Q. Is the Simmens system, so called, is it a complete system, or is it a detail patent? A. The system was so crude that I couldn't answer that question. The speed control system had only been worked out, I was advised, in the shape of a very crude model which was displayed at the meeting of the Electric Railroads Convention in Atlantic City about a year or so ago — no, last year, during 1914. The speed control part of it I do not think has ever been worked out. I cannot state that positively, but that is my opinion.

Q. Do you know of a corporation by the name of the Simmens Automatic Signal Company? A. Yes, sir, I have heard of it.

Q. The Simmens Automatic Railway Signal Company? A. Yes, sir, I think that is the title.

Q. Do you know anything about where it was incorporated? A. No, sir, I heard just before I came in here it was an Arizona corporation.

Q. Do you know anything about the capital stock of the company? A. No, sir.

Q. Do you know of its ever having installed any signal system upon any railroads for actual operating purposes? A. I have heard that it had been put on experimentally on one or two small electric lines in the middlewest, but I cannot give any definite information about it.

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Q. But experimentally only? A. I think so.

Q. Do you know of the system having been adopted by any railroad company in this country? A. No, sir.

Q. Do you know where the office of the company is? A. Buffalo, I understand. In fact, I had a letter from one Mr. Simmens the other day from that office.

Q. Do you know any of the people connected with that corporation? A. I never met any of them.

Q. You saw the system as represented by the crude model you speak of at the Atlantic City convention last year? A. I didn't see it, but my representatives of my company, who went there to this convention reported it to me.

Q. Then you really have no opinion based upon investigation? A. Not personal, only the opinion of my engineers.

Q. I think there may be something of a misunderstanding or perhaps a misapprehension of the situation covered by this Fourth avenue contract, and I am going to ask you to give us your understanding of it; just what lines was the so-called Fourth avenue contract intended to cover; it was not limited, in other words, to the Fourth avenue? A. No, sir. It covered a large part of the B. R. T. system; not quite all, nor not the elevated roads.

Q. Did it include any of the elevated roads? A. No, sir, I think not.

Q. Of course it did not include surface roads, because it would not be necessary there, and not trolley roads; it meant only the subway system to be constructed in Brooklyn, did it not? A. Under the dual system, yes, sir.

Q. Under the dual contract? A. Yes, sir.

Q. What proportion of the entire contract would be in operation on the Fourth Avenue line, roughly, if you can state? A. I would have to make a pure guess on it.

Q. You have known, I suppose, and did at the time you were preparing your proposal? A. We did not divide it up into fractions of the whole. We bid on sixteen sections which covered certain portions of the route, and they varied, as I remember them, in cost from $200,000 a section down to $20,000 a section.

Q. Have you any opinion as to what part of the entire contract, what part the Fourth avenue lines bore to the entire contract?

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A. I really would rather not make a guess. It is a matter of fact and can be easily determined from the contract itself.

Q. Is it a small part or a large part? A. I should say a quarter or a little more, a quarter to a third.

Q. This $1,300,000 contract covers perhaps three or four hundred thousand on the Broadway-Fourth avenue lines, and the balance is on other lines? A. Yes, sir, roughly, I should say, but the whole matter can be determined correctly, and I could furnish it to you if you would like to have it.

Q. I presume we have it in the record, but it would require considerable expansion to read it into the record, to establish the fact, probably? A. Yes, sir.

Q. Have you any information as to what the development has been of the signal system under the terms of the contract as it was awarded? A. My engineers have advised me that the work is being installed under the specifications that I bid upon, the first specifications, before they had the optional features introduced for the speed control system, if it should prove satisfactory to the railroad officials.

Q. If, after the completion of the experiment? A. After the completion of the experiment, if the railroad company desired to install the speed control system, the Simmens system, they would have that option.

Q. And that would result in the removal or displacement of a portion of the installation that might have been installed under the terms of the contract and specifications under which you bid? A. The contract as modified provided for that.

Q. Have you any information as to how much has been installed on this Fourth avenue? A. An estimate was made recently of about around 13 per cent had been installed.

Q. And that entirely on the Fourth avenue line, is it not? A. I understand so, yes, sir.

Q. Do you know what, if anything, has been done in connection with the development of the speed control? A. I have heard that they have tried some experiments, but nothing further than that.

Q. Do you know where these experiments have been tried, or anything about them? A. No, sir, I don't know where they were

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tried. I have been advised that the Simmens system — I have been advised by my engineers, from what they understand in keeping watch upon what our competitors are doing, it has simmered down to a point where they are going to use a device similar to the one Simmens has installed on these trolley lines that I referred to earlier, which is merely an automatic stop, and not a speed control system. That feature has been installed by several so-called speed control companies, whereby a rail on the side of the track is used to shut off or put on the brakes by shutting off the air on the locomotive, as it goes by these sections of the third rail, and I am under the impression that that is being installed in the Brooklyn Rapid Transit lines, the Fourth avenue lines that are in service. That is not speed control. That is merely the equivalent of the automatic which has been in use in the I. R. T. subways for the last number of years.

Q. Is that a pneumatic system? A. That is an electro-pneumatic stop, actuated by air and electricity, and this system is a purely electrical automatic stop.

Chairman Thompson.— That is not a feature a patent would be of any value to protect, is it?

Mr. Renshaw.— I don't think any patent would amount to much on that feature alone. I doubt if any patent would be worth anything for that.

Q. Have you ever examined the Simmens patents? A. No, sir.

Q. Do you know how many there are? A. No, sir.

Q. Have you ever had any inspection made of them for you or on behalf of your company? A. Only on this occasion that I spoke of at Atlantic City, my engineers examined it carefully, and reported it was so crude and undeveloped that it was not worth considering from a practical point of view.

Q. Did they examine the patent or the model? A. Just the model. They did not consider it sufficiently important to go into the patent situation, and they wouldn't take it up until after they had approved of the system.

Chairman Thompson.— We will take an elastic recess for a few minutes.

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AFTER RECESS

Examination by Mr. Lewis resumed:

Q. How long have you been in this signalling business, Mr. Renshaw? A. I first went into the signal business about 1896, I think it was, and remained in it until about 1903, 1902 or 1903, and then I was out of it until 1908, the beginning of 1908.

Q. You have had quite a number of years of experience in the signal business? A. Yes, sir.

Q. And during that time you have kept informed on the subject of patent development connected with the art? A. So far as I was able to, yes, sir.

Q. You have examined various patents covering methods of controlling speed? A. Some, yes, sir.

Q. Automatic and pneumatic and electric and otherwise, I suppose? A. Yes, sir.

Q. Have you ever seen drawings of the Simmens system, the blueprints, showing the methods of application of their principle? A. I have never seen the patent drawings. I have only had sketches made of it by my own engineers of what they saw at Atlantic City, and they are not very definitely fixed in my mind.

Q. Is it true or not that inventive minds have been at work upon this subject pretty generally for the last period of years, twenty years, or more? A. I should think at least twenty years.

Q. Is it true a good many patents have been applied for and perhaps a good many issued? A. I believe so. I don't know how many.

Q. You have seen some and known of some, have you? A. Yes, sir.

Q. Are you able to give an estimate of the number you have had personal knowledge of? A. I couldn't state definitely how many.

Q. A good many? A. Well, no, not a good many, because most patents of that kind are of very little value and never brought to anybody's attention usually, but the patentee, I presume. I have known of half a dozen that have been of sufficient importance to be brought to my attention.

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Q. When did you first know of the existence of this so-called Simmens patent? A. I think I saw the advertisement in the trade papers two or three years ago.

Q. And is that about the time that you had a letter from Simmens? A. No, sir.

Q. Subsequent to that time? A. That was within a couple of weeks I had the letter from E. M. Simmens.

Q. Did it relate to this patent situation in any way? A. Yes, sir. It was a letter which I received about two weeks ago from a party who signed their name as E. M. Simmens, from the Hotel Broetzel, in New York. I assumed it was Buffalo, when I first saw it, and replied to it at Buffalo, and I told my stenographer to look up the address of the Simmens Company which was in Buffalo.

By Chairman Thompson:

Q. What did the letter say that you got? A. The letter said that they had read my testimony given about two weeks ago in relation to the installation of the Simmens system in Brooklyn, and that they had been in California a long time and had just come east and were going to look into the conditions on the Brooklyn Rapid Transit and they would be glad to give me information about it, and I immediately wrote saying I would be glad to have any information they could give me, to the address in Buffalo. The letter was replied to by Mr. Simmens on paper with a heading such as you read off, stating that they had not communicated with me, that their system was owned or controlled or something to that effect, by the General Railway Signal Company, and that the letter was probably from Mr. Simmens' former wife, and asked if I would send them a copy of the letter. I think I wrote another letter to the Hotel Broetzel address, asking for information that they might be willing to give.

By Mr. Lewis:

Q. In New York? A. Yes, sir, and have not received a reply.

Chairman Thompson.—Mrs. Wood, the mother of Commissioner Wood, her attorney called me up a little while ago and stated that she desired to go to Connecticut, to some place in Connecticut, on

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account of the fact she was not feeling very well, and said she could be produced before this Committee at any time desired. That was from Mr. Stanchfield, and I asked if we could have her bank account, and he said we could.

By Chairman Thompson:

Q. What is a patent like this Simmens patent worth? A. That is very hard to say, Senator. I personally should think it was not of very much value.

Q. There are a lot of patents covering speed control and automatic stops? A. Yes, sir.

Q. Worth about a hundred dollars a bushel, something like that? A. It is very difficult to put a value on those things, Senator Thompson. I would never consider it of much value.

Q. Practically no value? A. It might have some, yes, sir.

Q. What do you mean by some, a hundred dollars? A. If you wanted it, it might be worth more than that.

Q. How much more? A. I really —

Q. For practical use, in using the thing the patent was intended to cover, was the patent worth anything? A. I don't know what patents the Simmens system has.

Q. The speed control automatic stop, such as you understand this is? A. For the purposes of an automatic stop, I don't think it would have much value at all, and I think anybody could go into that field and build pretty nearly anything they wanted, and I don't think it would be worth anything, and so far as the speed control system is concerned, I can't say, because I don't know what patents the Simmens system covers.

By Mr. Lewis:

Q. Has there been up to the present time, within your knowledge development of a practical speed control device? A. None has been developed. I am perfectly able to state that.

CLIFTON W. WILDER, being first duly sworn, testified as follows:

By Mr. Lewis:

Q. Mr. Wilder, will you give us your full name? A. Clifton W. Wilder.

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Q. And you are on the engineering staff of the Public Service Commission? A. Yes, sir.

Q. How long have you been? A. About eight years.

Q. Have you been consulted in connection with the installation or proposed installation of the so-called Simmens speed control and automatic stop device on the Brooklyn system, B. R. T. system? A. I have, yes.

Q. As I understand the situation, proposals were solicited by the B. R. T. Company for the installation of automatic signal systems, and bids were received for the installation, were they not? A. Yes, sir; that is my understanding.

Q. And a contract was awarded to the General Railway Signal Company for such a system in December last? A. Yes, sir.

Q. And there was an alternative system embodied in the contract; will you explain what that was, for the record? A. The contract was so worded that the Signal Company obligated themselves to undertake the development of a speed control system, which if it proved satisfactory to the railroad company and the Public Service Commission, it would substitute for the temporary — or for the first signals they installed, and would equip the rest of the lines of the company as outlined in the contract with the speed control system.

Q. That means, as I understand it, that the work of installing a signal system was to be undertaken and completed unless before its completion the development of the automatic stop and speed control proposition should reach such a stage as to make its substitution advisable for the signal system; is that correct? A. Yes, sir.

Q. In which event, the company, with the approval of the Public Service Commission, might authorize the use of the automatic stop and speed control device, instead of the standard signal system, upon which bids were presented for the installation — for which bids were presented? A. Yes, sir.

Q. Will you tell us what has been done toward the installation of the signal system? A. I have seen several drawings submitted by the signal company of parts of the device as developed —

Q. Before you take that up, will you tell us what part of the Standard Signal System has been installed, if any? A. The

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Fourth Avenue Subway, from Chambers street station, throughout the subway portion, and the Sea Beach Cut, which is now in operation, has been equipped with automatic stop signals.

Q. And in accordance with the specifications submitted at the time the proposals were requested? A. Yes, sir, very nearly so, as nearly as practical.

Q. What part does this represent of the entire work covered by the contract; give a percentage estimate, if you can state it? A. I would have to make an estimate which would be perhaps rather of a guess at this time, without going into it in detail. I should say the present installation was approximately fifteen per cent. of the complete installation called for under the contract.

Q. And the balance of the installation called for under the contract has not been installed, I take it, because of the fact the construction has not progressed far enough for its installation? A. No, sir. Everything has been installed as far as ready to be installed.

Q. Will you tell us what has been done, as far as development of the automatic speed control alternative proposition is concerned? A. I have received information from time to time from the signal engineer of the New York Municipal Railway Corporation, as to the development of various details. I have examined several prints showing the proposed construction of several details, and I have inspected a car of the New York Municipal Railway Corporation on which a portion of the development is now installed and in experimental operation on one of the tracks on the Sea Beach line.

Q. And so far as you know, that is as far as the development has extended of this system? A. Except from information given me by a representative of the Signal Company, who was with me at the time I inspected the car.

By Chairman Thompson:

Q. He is asking you, as far as you know? A. Yes, sir, that is as far as I know.

Q. Why do you go to the rest of the extent? A. Well, I gave some information that has been given me by the Signal engineer.

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Q. As a matter of fact, all that has been done, an experimental car has been partly equipped? A. Yes, sir.

Q. And only one car? A. Yes, sir.

Q. And only partly equipped? A. Yes, sir.

Q. And they have been at it over there a year, pretty near? A. About a year, yes, sir.

Q. And you don't know whether this thing is a practical thing or not, from any test you know of that has ever been made? A. No, sir.

Q. And you are engineer of the Public Service Commission of the First District, in charge of this matter? A. Yes, sir, I am not fully in charge of this matter, as I report directly to Mr. Craven. I am the electrical engineer.

Q. You are the head of this particular department? A. Yes, sir.

Q. When this award was made—was the contract made for the installation of this signal system entirely without reference to this speed control device? A. The contract was made so that the company or the Commission, or the two together, could exercise their option and have the speed control installed if thought desirable.

Q. Did it make any difference so far as the speed control was concerned, whether this company got the work of putting in the signals, or some other company? They could have bought this speed control of some other company, if this company had the contract for putting in the signals, couldn't they? A. This company offered to develop this system, to develop a speed control, which is a very desirable device to use.

Q. Did they guarantee to develop a practical system? A. No, sir; to experiment with it.

Q. Anybody could do that? A. Yes, sir.

Q. There are over fifteen hundred people doing that now? A. I don't know.

Q. There are a lot of them? A. Yes, sir.

Q. I understand over three thousand of them have been inspected by the New York Central lines? A. I presume so.

Q. And none found satisfactory yet? A. Probably.

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Q. And they have an experimental track on the Harlem Railroad? A. I don't know.

Q. And Mr. Fox in charge of testing out anything that looks to be practical? A. I don't know about that at all.

By Mr. Lewis:

Q. Did you make any report on this subject when this matter was submitted? A. Yes, sir.

Q. Is your report on file? A. Yes, sir.

Q. Your report is part of the record on the case, is it? A. It is in the Commission's files. I don't know whether you have it or not. It is a report I made to Mr. Craven. I made a joint report with our consulting engineer to Mr. Craven.

By Mr. Shuster:

Q. Do you recall the date? A. No, sir, I couldn't recall the date now. I should think it was in December, or the latter part of November last. I don't recall the date now.

Chairman Thompson.— All the witnesses are hereby instructed to appear tomorrow morning at 11 o'clock, and we will turn over a new leaf at that time, and start promptly at 11 o'clock.

By unanimous consent, we now adjourn until tomorrow at 11 o'clock A. M.

Whereupon, at 4:25 o'clock P. M., an adjournment was taken to 11 o'clock A. M., December 21, 1915, at the same place.

DECEMBER 21, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

11 o'clock A. M.

The committee was called to order at 11:30 o'clock A. M., Chairman Thompson presiding.

Quorum present.

Chairman Thompson.— The committee will please come to order.

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Mr. Lewis.— Is Mr. Banks in the room?

Mr. Banks.— Yes, sir.

Mr. Lewis.— Take the chair, Mr. Banks.

WILLIAM C. BANKS, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Have you your bills with you; you heard Mr. Renshaw's testimony the other day? A. Yes, sir.

Q. Did you ever send for Mr. Cade to come to see you, as he said you did? A. Yes, sir.

Q. What did you say to him? A. Can I tell my story?

Q. Sure. A. Right after Mr. Cade got that Center street loop contract, I met Mr. Cade in the place I have mentioned several times, No. 1 Dey street, one afternoon. I congratulated Mr. Cade on getting that work and I said, "By the way, you have got to use a lot of material I could supply on that work, and I would be glad to get a chance upon it," and he said "There is no chance with that, but if we can get the other contract, give us figures on that work, and we may be able to give orders for material." He said, "All the work they had was covered on that first one," and he said, "Was Commissioner Wood once interested with your concern?" and I said, "That is the same one," and he said, "What kind of a fellow is he?" and I said, "A good hale fellow well met," and he said, "Can you arrange for me to meet him some time?" and I said, "There is no necessity of that; you go and see him yourself. Anybody can see Mr. Wood."

Q. Are you telling this as it took place? A. Yes, sir, absolutely, at that time, and telling the truth about it. I used to see Mr. Cade occasionally in the same place, No. 1 Dey street. I have seen him there quite often, and always in the evening, and always some other people present, and I read in the papers the figures had been opened up on the Fourth avenue signal job and the Federal Company was low, and I immediately got busy with Mr. Cade again.

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Q. Did you telephone him? A. Yes, sir. I would like to see him, and I had missed him several nights, and I said, "You are low on that. You have promised to give me a chance to figure on it, and am I in on it?" meaning to get some work, and he said, "Wait until I get the contract and we will talk about it, and your knowing Mr. Wood as you do, I wish you would put in a good word for us," and I used to see Wood every Sunday morning, if the weather was favorable and playing baseball, and I never talked to him about it only trying to get information in regard to some of the contracts. Mr. Wood said probably the Federal Company would get it, no question about it, being the low company, but supplemental bids put in, and the figures were all thrown out, and I kept posted as good as I could from Mr. Wood what was going on, and when the General Company came with the speed control device, the General got the job. I felt very much peeved about it. Before that contract was signed Cade said "Banks, if I had the handling of that thing I think I could put it across" and I said, "The proper thing for you to do is get some good legal talent, and the B. R. T. will make the recommendation," and I got that from Mr. Wood, of course, and he said, "It is out of my hands, Renshaw is handling that thing with some friends up-state, and they are handling it with Mr. McCall," and the very words he told me, "And if we do get it I will see you get some business, and if there is any change in it will see that you get a piece of it, but it is out of my hands entirely." Mr. Cade never made any proposition as to a commission. He told me Mr. Renshaw was handling the thing, and he mentioned Mr. Crimmins, I don't know whether John T. Crimmins, and he is up in Connecticut, and Mr. Cade talked about the Bradys, and those people were doing the business with Mr. Renshaw, and at that time interceding for the Federal Signal Company with Judge McCall.

Q. You were seeing Wood from day to day all of this time? A. I was seeing Wood probably once a week, on Sundays, and Mr. Wood asked me that time, if I had any dope on this speed control device and I did get some pamphlets on speed control and automatic signals and gave that to him.

Q. Who owned this Simmens patent? A. I don't know.

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Q. Where did you first hear of it? A. Some five or six years ago I think it was tried out somewheres out west, and through some of the signal engineers talking about speed control and cab signals.

Q. When did you talk to Wood about it? A. I believe about the time that the B. R. T. recommended that system.

Q. Not before? A. No, sir, I didn't know anything about it before.

Q. What did Wood know about it? A. What he got from the General Railway Signal Company or their engineer, Mr. Howe. He told me Mr. Howe had been to see him several times.

Q. Did you know Howe? A. Yes, sir.

Q. Did you ever talk with him about it? A. No, sir. It might have been at a hearing, I don't know which.

Q. What other engineers of the B. R. T. do you know? A. Mr. Johnson, the signal engineer, and he used to be assistant to Mr. Belliot of the New York Central. I think it is Robert Johnson, and he was assistant to Mr. H. S. Belliot of the New York Central, and I believe he went to the B. R. T. at that time. I have heard of Mr. Menden, I don't know him personally. I got from Mr. Wood's talk the B. R. T. wanted that General Railway system. I got that from Mr. Wood just prior to the time the contract was signed.

Q. Was that his reason for voting for it? A. I don't know.

Q. Did he tell you he was going to vote for it? A. No, sir.

Q. Or he was not? A. No, sir.

Q. Did he say he was going to vote for the Federal? A. No, sir.

Q. Or against it? A. No, sir.

Q. Did you talk to him about the proposition as to how he was going to vote? A. No, sir.

Q. Never? A. No, sir. I never spoke to him about Mr. Cade either. Mr. Renshaw testified I came from Mr. Wood. I came from my own account.

Q. You and Wood were interested in business together once? A. Yes, sir.

Q. What company? A The Northwestern Construction Company. I was an employee of his.

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Q. Before that you were interested somewhere, weren't you? A. Why I won't say I was interested. My old concern which failed, the Banks Electric Manufacturing Company, were manufacturing batteries, and we got in litigation with the Edison Manufacturing Company in Orange, and we were up against it, and I went to Wood and asked Wood if he wouldn't take a chance and get behind it, if I could defeat the Edison I could make a good thing out of it. Mr. Wood went behind the proposition, and we lost out, and from that line of work it drifted into general materials.

Q. Is that the first company you were ever connected with? A. Yes, sir.

Q. You worked before that? A. Yes, sir.

Q. Who did you work for? A. Gordon Battery Company.

Q. That company busted, didn't it? A. Not in my time, afterwards probably.

Q. Somebody by the name of Lockwood worked there at the same time? A. Yes, sir, Charley Lockwood, president of the company.

Q. You and Lockwood were pretty good friends? A. Yes, sir.

Q. Tell us all you know about the Gordon Company? A. What do you mean?

Q. You know, and I know? A. Why I came with the Gordon Battery Company in 1896, and they had a place 82 and 84 West Broadway, New York City and a fellow by the name of Gordon and Fred Burnham controlled the concern.

Q. And you and Lockwood worked for them? A. No, sir. That wasn't so. Mr. Lockwood was interested with his family in Boston, and I think in the Davison Rubber Company, and someway Mr. Burnham and Mr. Gordon got Lockwood interested on the stock proposition, and I believe after Lockwood had about $10,000 tied up in the company, Lockwood thought he would come to New York and see what his money was doing, and when he found out what Mr. Gordon and Burnham and others were doing he cleaned those fellows up pretty quick and took control of the concern. I believe it was the game to trim Lockwood at that time. Mr. A. S. Benham was in cahoots with Burnham, and they were theosophists, and Burnham and Gordon got trimmed.

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Q. Didn't you help trim Gordon? A. No, sir, I wish I did.

Q. Didn't you? A. No, sir.

Q. You were soliciting business for the Gordon Company? A. No, sir, I was doing some experimental work.

Q. Didn't you solicit business for the Gordon Company? A. Afterwards, not at that time.

Q. When you solicited business for the Gordon Company nominally, weren't you turning the business over to someone else? A. No, sir.

Q. And didn't you tell Gordon that you had done so? A. No, sir.

Q. And wasn't it put down in writing and didn't you say you would have to see a lawyer before you signed it? A. No, sir. Whoever told you that was stringing you.

Q. I think you are doing the stringing? A. No, sir, never.

Q. Tell us what is your right name? A. That is my right name.

Q. What? A. William C. Banks.

Q. How long since? A. Has been.

Q. Since when? A. As long as I can remember.

Q. Wasn't it Benke? A. Yes, sir, by my mother's side.

Q. When was that? A. When I was a kid.

Q. Wasn't it about ten years ago? A. No, sir.

Q. Why did you change? A. There was no particular reason.

Q. Didn't you go by the name of Benke up in the Bronx? A. No, sir.

Q. Ten or fifteen years ago? A. No, sir.

Q. Do you want me to bring out the reason why it was changed? A. I had a name similar to that.

Q. What was it? A. I refuse to answer.

Q. You refuse to tell your right name? A. No, sir.

Q. What was it? A. Benke.

Q. That was your right name? A. Yes, sir.

Q. How long ago was that your right name? A. I have changed my name some twenty-five years ago.

Q. As long as that? A. Yes, sir.

Q. Do you want to tell the reason for it? A. No particular reason, only I didn't like the name.

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Q. Is your father still living up in the Bronx? A. No, sir, my mother is.

Q. She goes by that name, doesn't she? A. Yes, sir.

Q. And you have changed yours? A. Yes, sir, and I had a perfect right to, if I wanted to.

Q. And there was a reason for it? A. No, sir. None.

Q. None at all? A. No, sir, absolutely none.

Q. When did you first know Wood? A. About fifteen or sixteen years ago.

Q. You and he have been intimate ever since? A. Not intimate. We have known each other.

Q. You have been intimate? A. No, sir.

Q. You have been dealing with him? A. Yes, sir.

Q. And meeting him and seeing him? A. Yes, sir.

Q. And seeing him and talking to him? A. Yes, sir.

Q. And he has a private telephone wire and you have his number? A. He did have. I haven't talked with him over it in six months.

Q. He did have when this contract was under consideration? A. Yes, sir.

Q. And you have a private number? A. Yes, sir. And I have one at home.

Q. Didn't he call you on that private number? A. Yes, sir.

Q. And didn't he talk with you about this contract on that telephone? A. No, sir.

Q. He knew you had a private telephone? A. Yes, sir.

Q. And talked with you on this subject? A. No, sir, only what was news.

Q. He knew you had a private telephone? A. Yes, sir.

By Chairman Thompson:

Q. He knew both of your private numbers, the one at your office and the one at your house? A. Yes, sir.

Q. And he called you on both phones? A. Yes, sir.

Q. And you called him on his private phone? A. Yes, sir.

Q. Several times? A. Yes, sir.

Q. A dozen or fifteen times? A. Yes, sir, and probably more.

Q. In December, 1914? A. Yes, sir, and before that.

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Q. You were talking with him on the telephone at your call on his private number and he was talking with you at your office and house on your private numbers on his call? A. Yes, sir.

By Mr. Lewis:

Q. What were you talking about? A. Most of the time his baseball games, I think.

Q. Tell us what you were talking about; you have got to a point where you can afford to tell this Committee the truth? A. I never talked signals or any part of a contract over the telephone, to Mr. Wood, and never did. I might have talked signals and such things when I met him, but never over the telephone.

Q. When you met him, tell about that. A. I never spoke in reference to what was going on at the Public Service Commission on this work. I was talking to get information for Mr. Cade.

Q. When did you talk to him about the Simmens patent? A. I guess that must have been just prior to — well, the thing come up, the B. R. T. recommended that, and that was about the time he asked me what I knew about it.

Q. Did he ask you if you knew about it? A. Yes, sir.

Q. And did he ask you to find out what there was about it? A. He asked me to get some dope for him, and I got some pamphlets on it.

Q. What dope did you get? A. Some pamphlets.

Q. Where did you get it? A. Borrowed some from the signal engineer of the Interborough, J. M. Waldron, and got some more out of my own files.

Q. Where did you get it? A. From the Signal Engineers' Association.

Q. Are you a member of that? A. Yes, sir.

Q. How long have you been? A. Since 1897 or 1898.

Q. Under which name? A. The original name, William C. Banks.

Q. That wasn't the original name? A. Well, under that name. 1896, I think it was. I am a charter member of it, one of the first members of it.

Q. What did you tell Wood about it? A. I couldn't tell him anything about it.

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Q. What did you tell him about the dope you got? A. He wanted to look it over and read it, and asked me what this was, and that was, and how it operated, and I told him he better read it himself, and I couldn't tell him.

Q. Didn't you explain it to him? A. No, sir, he is a hard man to explain those things to.

Q. You are an expert, and you ought to be able to explain it. A. I don't pretend to be an expert on that signal system.

Q. You must have convinced him, didn't you, it was a good thing? A. I couldn't convince him. I wish the Federal got the job, too, and I might have got some business out of it.

Q. Wasn't he for the Federal Company originally? A. I couldn't say that.

Q. Don't you know that was the fact? A. No, sir.

Q. Didn't he tell you that was true? A. No, sir; he said he thought the Federal ought to get the job, inasmuch as they were low.

Q. And he shifted from that to the General? A. I don't know about that.

Q. Did he shift before he got the Simmens information or dope, or after? A. I don't know. He must have shifted after, because the dope I got before they voted.

Q. You furnished the dope and he shifted? A. I don't think I had any Simmens dope.

Q. He shifted after you gave him the dope? A. The record shows that.

Q. That is what you have said, isn't it? A. It must have been, yes.

Q. And did he shift because of the dope that you gave him? A. I don't know as to that.

Q. Don't you know? A. No, sir.

Q. Didn't he tell you he was going to shift? A. No, sir.

Q. And didn't you tell him he ought to shift? A. No, sir.

Q. What was the dope you gave him? A. Simply some pamphlets on speed control or automatic stops.

Q. And is that all? A. Yes, sir.

Q. Just a little innocent information? A. Yes, sir.

Q. And printed? A. Yes, sir.

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Q. And not over the private telephone wire? A. No, sir; I wouldn't talk that over the phone.

Q. Why not? A. I didn't talk anything with reference to signals over the phone. He couldn't understand them.

Q. You talked innocent things over the phone with him? A. Baseball and such as that.

Q. You kept a private wire for baseball business? A. No, sir, my own business, innocent matters.

Q. Did you talk some serious matters to him on the private wire? A. Might have.

Q. What about? A. Appointments and so on, and meeting people.

Q. What appointments? A. Parties we had and things that happened the night before, and so on, and those were serious.

Q. Were you ever at Wood's office, 43 Exchange place? A. Yes, sir.

Q. How many times? A. Probably a dozen times.

Q. Since he became Commissioner? A. Yes, sir.

Q. What kind of a room is it? A. The first office he had before he became a Commissioner was rather an elaborate outfit, and when he became Commissioner, he took his furniture and stored it in a very small room, a room I should judge to be twenty by ten.

Q. Did you go there with him? A. Always met him there or went there.

Q. Did you make an appointment to go there to see him? A. Sometimes.

Q. Did he call you up by the private wire? A. I don't know whether it was or not.

Q. Sometimes? A. Might have been.

Q. You and he would go to the private office and have a private conference, arranged for on the private wire? A. I wouldn't say that.

Q. Why not? A. I don't think it was always in the private office and on the private wire. He sometimes had the young man there, that was referred to the other day.

Q. Who was he? A. There was some mail coming to him at my office for him, and I delivered it there. His name was Albert.

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Q. When you and Wood would go into the private office, would Wood tell Albert to go out? A. Sometimes he would.

Q. And that was when you had private matters to discuss? A. It wasn't private matters.

Q. What did you go there for, if you didn't to discuss private matters? A. I wouldn't say private matters.

Q. What were they? A. On a million and one things. He could talk you deaf and dumb and blind.

Q. What were some of the things? A. Most of the time in reference to baseball.

Q. I would cut that out. A. Yes, sir, it was.

Q. You may tire that out and wear it out. A. I was manager of a team up there, and I had another name on that, too. I was manager of a team in the Bronx, on which Mr. Wood played on.

Q. We don't want to lumber up the record with your stories of the baseball. A. We never talked signals, but might have two or three times down there, —

Q. Didn't you go down there and talk with him about the Simmens patent? A. I might have, yes, sir.

Q. Now, when was it? A. I don't know; I can't remember. I might have talked Simmens and other patents to him, too.

Q. More than once, didn't you? A. I don't think so. Possibly once.

Q. What did you say to him? A. I wish to retract that. I didn't talk to Mr. Wood at that office at any time while that contract as to the recommendations of the B. R. T. was before the Public Service Commission. I did talk to him, but I don't know whether about the Simmens patent, but about speed control, and the automatic stops, up at Columbia Oval, in the Bronx, the Sunday previous to the contract being awarded.

Q. What did you talk to him about? A. I told him I didn't know anything about the Simmens device.

Q. Did you ever hear of the Simmens Company? A. I have, yes, sir.

Q. What was the conversation? A. He wanted to know about the Simmens speed control or cab signal, and I told him at that time I did not think a cab signal was a success, or a speed control signal, I hadn't heard of any, and he said, "I understand that

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the Simmens people or the General Railway Signal Company, have something that is very fine," and I says, "You know more about it than I do." He had seen the people and I hadn't. I had not seen the General Railway Signal people, and had not talked with them about it.

Q. Did he tell you who the Simmens company was? A. No, sir.

Q. Did he seem to know about it? A. No, sir.

Q. He knew about the Simmens patents? A. I believe he did tell me that the General Railway Signal had just made a deal with somebody to purchase the patent, which was a wonderful improvement over the present system.

Q. He said it was a wonderful improvement? A. That was what the General Railway Signal said.

Q. That was the day of the conversation at the Columbia Oval? A. I think so.

Q. The Sunday before the contract was awarded? A. I think so.

Q. What day was the contract awarded? A. I don't know. I was a most surprised man when I seen the contract was given to the General.

Q. Why? A. The Federal was low.

Q. You didn't drop dead, did you? A. I lost some business by the Federal not getting it, I think. I would have got something out of the Federal.

Q. What interest has Wood in your business? A. None.

Q. Since when? A. He hasn't had since he sold the business to his brother, and I bought it from his brother. He has no interest in my business, absolutely none.

Q. You said something or other about the engineers of the B. R. T. recommending the Simmens patent, didn't you? A. Mr. Wood told me that.

Q. When did he tell you that? A. I think just about the same time he talked with me about the Simmens system, or did I know about it.

Q. Was that at the Columbia Oval? A. I think so.

Q. You had quite a long conversation there that day? A. We were there about three or four hours.

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Q. What do you mean by the Columbia Oval? A. Columbia College ground, 210th street, between Webster and Jerome avenue, and it is a big field, and we were on the field, and there was quite a few people there, ball players and others.

Q. How was the weather that day? A. I don't know. I think it was not very good.

Q. Any snow on the ground? A. No, sir.

Q. In December? A. No, sir, but we had a pretty open season, and I don't think there was any snow.

Q. How long were you there? A. Must have been three or four hours.

Q. In the open field? A. In the open field or the dressing rooms.

Q. No telephone wires or dictaphones anywhere? A. I don't know, there may have been.

Q. Anyone with you besides Wood? A. Yes, sir.

Q. Immediately about you? A. Yes, sir, must have been.

Q. How far away? A. In the dressing room there was always one or two young men around.

Q. Handy men? A. No, sir; players and rubbers and so on.

Q. Where did the conversation take place, in the dressing room? A. In the field and dressing room, both.

Q. And lasted two or three hours? A. Possibly did.

Q. Three or four hours? A. Possibly, maybe.

Q. And all the time discussing the Simmens patent? A. No, sir; I would be tongue-tied if I did that, talk that long, on the Simmens system.

Q. The only thing that could tie your tongue down is when you want to conceal something or keep something to yourself? A. I don't want to conceal anything.

Q. You have been tongue-tied for a month. A. You have kept me here for a month.

Q. It has had its effect on you? A. I am telling the truth.

Q. What did Wood tell you the engineers said about the Simmens patent? A. Wood informed me the engineers of the B. R. T. wanted that system.

Q. Which engineers, did he say? A. He didn't mention any particular engineers. He might have mentioned Mr. Johnson's name, or Mr. Menden.

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Q. He mentioned somebody else, didn't he? A. That is the only engineers they have over there, I think, Senator.

Q. That is the only engineers they have in charge of that work? A. Yes, sir.

Q. Well, Wood told you that day he was going to vote for the General Railway Signal? A. No, sir; he did not.

Q. Didn't he tell you he was going to vote for that, because they were going to use the Simmens patent? A. No, sir.

Q. He told you the General Railway Signal Company had acquired the Simmens patent? A. Yes, sir.

Q. And didn't he say they were going to vote for it because they acquired that patent? A. No, sir.

Q. And because the railway officials wanted it? A. No, sir, but the engineers and executive heads of the B. R. T. wanted that system; he said they wanted that system.

Q. Didn't he lead you to understand he was going to vote for that? A. I told Mr. Cade that I believed and I inferred that.

Q. And as a result of that conversation? A. Yes, sir.

Q. You told Cade Wood was going to vote for that? A. No, sir, but what the B. R. T. official said. I told him the B. R. T. was making a strong fight for that system.

Q. What did you mean when you said you inferred he was going to? A. I didn't know how he would vote. He probably would vote that way if the B. R. T. officials wanted him to, and they were spending the money, weren't they?

Q. You told Cade that, didn't you? A. Not in those words. I told him the B. R. T. officials wanted that.

Q. And that Wood was going to vote for it, in your opinion? A. I don't think so.

Q. Didn't you? A. No, sir; but he could draw his inference. I might have said that.

Q. You intended him to draw that? A. No, sir.

Q. You wanted the Federal to get this job, didn't you? A. Yes, sir.

Q. And weren't you warning Cade that unless something was done, Wood would vote for the General? A. No, sir, but he

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ought to have some representation in the office, and fight the thing out with them.

Q. Did you argue with Wood in favor of the Federal Company that Sunday? A. No, sir; I wanted to find out what I could to give Cade the information.

Q. You were pumping Wood for Cade's benefit? A. Yes, sir.

Q. Cade hadn't given you anything? A. He promised to give me something.

Q. What? A. Some business.

Q. And some change? A. He said if the thing was put across, he would see that I got something.

Q. Some change was mentioned? A. Yes, sir; he did mention some change.

Q. And didn't you tell Wood there was some change in it for you if you got the contract for Cade? A. No, sir, I didn't. I didn't tell him anything of the kind.

Q. And you were there three or four hours? A. Yes, sir.

Q. And you and Wood were close friends? A. I thought we were.

Q. And you were discussing this matter confidentially? A. Yes, sir.

Q. And Wood knew that you were a Federal man? A. I don't know as he knows that, but I told him I would like to see the Federal get the contract.

Q. He knew that, didn't he? A. I don't know what he knew I was. I would have to tell a lie if I told that.

Q. You wouldn't think of doing that? A. No, sir; not in this case.

By Chairman Thompson:

Q. You thought Wood was, isn't that so? A. No, sir; Wood went against the proposition, didn't he?

Q. Didn't you get aboard when he took the other train? A. I wish I had.

Q. Why? A. I might have had some change that I was looking for.

Q. If you had went with the General along with Wood, you might have had some change? A. I didn't know anything about that at all.

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By Mr. Lewis:

Q. You owed P. Erskine Wood, at the time, didn't you? A. I think I did.

Q. Owing something to P. Erskine Wood? A. Yes, sir.

Q. For that stock transaction? A. Yes, sir.

Q. It was for your interest to get some change, wasn't it? A. Not from Mr. Wood, though.

Q. In order that you could square your debt to P. Erskine Wood? A. I was clearing it irrespective of that business. I was scratching along pretty hard.

Q. The Interborough was treating you pretty well, wasn't it? A. I got pretty nice orders, yes, sir.

Q. Regularly? A. I wouldn't say regularly.

Q. Every month, didn't you, from the Interborough? A. I got pretty fair results, and would have liked to have a whole lot more.

Q. You got pretty good orders from the very start, from the Interborough? A. I got business from other sources as well as the Interborough.

Q. Did you lend money from the other fellows where you got business? A. I might have.

Q. And did they lend to you? A. Yes, sir; and I paid them back and they paid me back.

Q. They were good to you? A. Yes, sir, and I was good to them.

Q. You were disappointed when the Federal did not get the contract? A. Yes, sir, very much so.

Q. What excuse did Wood make to you? A. Right after that contract was signed and given to the General, I said to him, "How in God's name did you have to give that to the General," and he said, "The B. R. T. engineer wanted it, and we had to do as they wanted us to, and they were spending their money, and they recommended this system," and I says, "I think the Federal ought to have had it, they were low," and I says, "It is a dirty trick to let the Federal lose out on a thing like that, and give the other fellow a chance to come in and undermine them."

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Q. What did he say? A. "It is out of my hands. I simply voted as the B. R. T. wanted us to vote," and that is the very words he put in my mouth.

Q. Did he say he would have voted for the Federal if the B. R. T. wanted him to? A. I believe he would.

Q. Did he say that? A. I did not know how they voted on the Center Street Loop. It seems they all voted for the Federal on the Center Street Loop.

Q. Was there any change suggested on the Center Street Loop? A. I didn't know anything about that.

Q. That was before you and Cade got friendly? A. I have known him for years.

Q. Did you telephone Cade about it at all? A. No, sir.

Q. Never? A. No, sir.

Q. Didn't negotiate with him on that subject? A. No, sir.

Q. You did after he got the contract? A. Well, that is quite some time after.

Q. You asked him for some business? A. Yes, sir, on the Center Street Loop, and he said he couldn't give me any, inasmuch as the contracts were all placed for that material.

Q. When did you first ask him for that, after he got the contract? A. It must have been a few weeks.

Q. A few days, wasn't it? A. Or a few days.

Q. Wasn't it the next day? A. I couldn't say.

Q. It may have been? A. It might have been. I don't remember that. It might have been a week, or a day, or two weeks, I don't know. I met him accidentally in that place, as I explained.

Q. Always met him there accidentally? A. Most of the time. I also called him up and he called me up several times.

Q. Sometimes by appointment? A. Might have been.

Q. When did you see Wood last? A. I believe last Friday night.

Q. Whereabouts? A. Grand Central Depot.

Q. What did you talk about? A. I didn't talk to him.

Q. Aren't you and he friends any more? A. Not after the mix-up, the way he has me in here, and tying me up as he has.

Q. What mix-up do you mean? A. I have been away from my business on account of that.

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Q. Do you charge it to him? A. I would like to, but there is no chance to any more than out of the fifteen hundred dollar deal he put across.

Q. He did not treat you very fairly on it? A. No, sir. He give Sid Johnson five hundred dollars out of that, which I ought to have had.

A Gentleman Sitting in the Room.— He gave it to the Union Switch and Signal Company.

Mr. Banks.— I didn't get it.

Chairman Thompson.— How much do you think you ought to have got out of it?

Mr. Banks.— I don't think I would have got anything, the way he did it, but I should have had half of it. That was the understanding we had.

By Mr. Lewis:

Q. Is that the reason you are mad at him? A. It has made me quite peeved since I heard of it.

Q. Last Friday night was the last time you saw Wood, was it? A. Yes, sir.

Q. When had you seen him before that? A. I might say a few days before that I met him and saw him quite the same way. Going up and walking through the Grand Central Depot, and he takes a train up and gets off at Tremont avenue, or Fordham road, I don't know which, and I get off at Tremont avenue.

Q. Did you ride with him? A. No, sir. I went in the rear car, and I don't know where he went.

Q. Is that because you were mad at him? A. I haven't seen him since the morning I testified to when I met him on appointment at the Grand Central Depot and walked with him down to 36th street to the house.

Q. That was the last time you talked with him? A. Yes, sir.

Q. That was after you knew about the fifteen hundred dollars? A. I didn't have much chance to talk to him about it then.

Q. Did you talk to him about the fifteen hundred dollars at that time? A. I gave him a parting shot on it.

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Q. What did you say? A. "Pretty raw deal you put over on me on that fifteen hundred dollars."

Q. What did he say? A. He threw his hands up.

Q. Does he always throw his hands up? A. Pretty near. He says, "Sorry, sorry, but I forgot about you."

Q. Did he say he had forgotten about you? A. Yes, sir.

Q. Did you tell him it wasn't too late to divide then? A. I didn't have much chance to talk to him then. He was talking about checks.

Q. Did you say anything about dividing what he had with you? A. No, sir, I didn't get that far with him, but I will before I get through with him.

Q. Rather bitter toward him, are you? A. Well, I don't feel the same as I used to, I will give you a tip on that, toward him.

Q. Used to be pretty friendly? A. Yes, sir.

Q. Did you lend him money sometimes? A. I think one morning he was short and I loaned him five or ten dollars, and I don't know as I ever got it back or not. It was one morning I met him and played ball, in the summer time, and I don't know whether five or ten.

Q. Did he ever lend you any money? A. I don't think I ever asked him for a penny since he has been away from my concern.

Q. Have you loaned him any money since he has been in the Commission? A. No, sir.

Q. Did he ever ask you for any? A. No, sir. My business wouldn't warrant it, to him.

Q. You could go out and borrow it, if you wanted it? A. I might for my own use, yes, sir.

Q. You are a good little borrower? A. It appears so, from the records.

Q. When did you see Cade last? A. This morning.

Q. Talk with him? A. Why, no. He was in the elevator at the lower floor of this building standing in the corner in a jovial manner, and I rushed in the elevator, I was a little bit late, and he says, "Hello, Banks," and I says, "How do you do," and we got to the first floor and he says, "I want to get out here. I don't want to be seen with you."

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Q. Did you blame him any? A. I don't know anything about it. He seemed to be afraid somebody would think there was a conspiracy or collusion between us.

Q. Is he afraid of you? A. I don't know.

Q. He has talked with you on the private telephones there? A. I never called him on the private telephone, always on the outside wires.

Q. Didn't he ever call you on your private telephone? A. I don't remember that. He may have. I am in my office sometimes in the evening after hours, and when he —

Q. I thought you were down to No. 1 Dey street evenings? A. After five o'clock the switchboard is practically locked, and I don't get to No. 1 Dey street until after six, and I stay until seven or eight or sometimes nine.

Q. After five o'clock your switchboard is locked? A. Yes, sir.

Q. He may have called you between five and six on your private line? A. Yes, sir, he may have.

Q. Did he call you on the subject of the Fourth avenue contract on the private telephone sometimes between five and six? A. I don't know that he ever called me on the private wire. I don't think he did. I am not sure he did. I get a good many calls, and I don't know whether he did or not.

Q. It would be hard to keep track of them all? A. The telephone company could give you a record of that.

Q. How many people have your private number? A. A good many.

Q. You get a good many calls over that wire? A. Not so very many, I get a couple a day.

Q. Did Wood call you on that private wire in the last week? A. No, sir, not in six months, five or six months, as I know of.

Q. Did the fifteen hundred dollars have anything to do with that, do you imagine? A. I don't know, Senator.

Q. Do you know John Stanchfield? A. No, sir.

Q. You don't know him at all? A. No, sir.

Q. Never in his office? A. No, sir. I don't know what the gentleman looks like, except from posters, and then I wouldn't know him if I met him in the room.

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Q. You have not consulted him at all? A. No, sir. No lawyer at all.

Q. You haven't much use for lawyers, have you? A. I haven't the price to hire any high class or high priced lawyers like the other fellows.

Q. Business not good enough, or don't you get your share? A. I don't see what I need a lawyer for, in the first place.

By Chairman Thompson:

Q. Didn't they meet you, and didn't you talk with some of Mr. Stanchfield's men? A. No, sir. A lot of men have talked with me around here on different topics, and I don't know who they are. I don't know any of these legal men around here. I have talked with a good many men around here, but I don't know any of these legal men around here, and I never talked with Mr. Stanchfield, and never been in his office, like other people around here.

By Mr. Lewis:

Q. Did Wood tell you it had been made any object to the B. R. T. engineers to take up the Simmens speed control proposition? A. What do you mean by an object?

Q. Don't you know what I mean? A. No, sir, I don't know what you mean.

Q. Did Wood tell you it had been made any object to the B. R. T. engineers to take up the Simmens speed control proposition? A. No, sir.

Q. Did he ever give you a suggestion? A. No, sir.

Q. Nothing of the kind? A. Absolutely no, no, sir.

Q. Did anybody else? A. No, sir.

Q. Did you know of the fact the Simmens patent was acquired by the General Railway Signal Company? A. No, sir, I didn't know whether it was or not.

Q. Did you ever know of its being acquired by the General Railway Signal Company? A. No, sir, and I don't know whether they own it today or not.

Q. You know it now? A. From the testimony, is all.

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Q. When was the first you knew of it? A. Not until I heard the testimony the other day.

Q. Did you ever know a man named Simmens? A. No, sir, I don't think so. I might have met a man in years back in the signal association; the name is very familiar.

Q. Didn't you testify a few minutes ago Wood told you the General Railway Signal Company had acquired the Simmens patent? A. Yes, sir, Mr. Wood told me and I testified, if I remember rightly, that the B. R. T. were told by the General Railway Signal they had acquired a wonderful system known as the Simmens system, and I believe the B. R. T. told that to the Public Service Commission and the Public Service Commission wanted to get some information from the General Railway Signal, and Mr. Howe, I believe, told Mr. Wood about it.

Q. Who is Mr. Howe? A. Chief engineer of the General Railway Signal, I think.

Chairman Thompson.— What is his first name?

Mr. Banks.— I don't know.

Mr. W. W. Salmon.— W. K.

Q. You knew it before it was testified to here? A. Yes, sir. I didn't know they owned the patent, except what I was told by hearsay.

Q. Do you know it now any better than you did a half an hour ago? A. I believe they did.

Q. You have believed it for a good while, haven't you? A. No, sir, I believed it ever since they closed that contract.

Q. What did you mean from your statement you did not know they owned it until it was testified to here? A. I have no absolute knowledge they own it now.

Q. Only from what they have testified, you believe it, and you have for a long time? A. Yes, sir.

Q. But you don't know it this minute, do you? A. No, sir.

Q. But you have known it for all intents and purposes for months? A. Yes, sir.

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Q. Why do you equivocate, and say you don't know? A. You are getting at me at all different angles. You start a lot of things, and come back.

Chairman Thompson.— You answer truthfully and it won't bother you how quick they come.

Mr. Banks.— I don't know whether they own it now or not, but I believe they do.

Q. How long have you known it? A. Perhaps since they put the proposition up to the B. R. T.

Q. You got your information from Wood, didn't you? A. I probably did.

Q. And you have believed it ever since? A. I can't say I don't believe it.

Q. And you have believed it ever since he told you? A. Yes, sir, practically.

Q. And you believe that was the reason for the award of the contract to the General Railway Signal Company, don't you? A. No, sir, I don't know anything about it.

Q. Wood told you he was going to vote for whatever the B. R. T. wanted; he said the Commission would probably favor them, and he told you the B. R. T. people wanted the Simmens patent, didn't he? A. He told me the engineers and others were in favor of that system.

Q. The B. R. T. engineers? A. Yes, sir.

Q. And for that reason you knew the contract was awarded to the General Railway Signal Company? A. Eventually.

Q. You knew it? A. Not before hand.

Q. You knew it when it was awarded? A. Yes, sir. I saw it in the papers and also from Mr. Wood personally.

Q. Didn't you know before it was awarded it was going to be? A. No, sir.

Q. Didn't Wood tell you that? A. No, sir.

Q. Didn't he talk to you about it? A. Except what I have testified about, what the B. R. T. wanted.

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Q. And he was going to vote for anything they wanted? A. No, sir; he said the Commission would probably favor the recommendation or vote for the recommendation of the B. R. T.

Q. And he said he was going to, didn't he? A. No, sir. He said the Commission would. He probably might have intimated he probably would vote that way, but I don't think he said that he would. His mind probably ran that way, that he would vote for it.

Q. That he was going to vote for anything the B. R. T. wanted? A. I think I said to him, "How do you figure that?" and he said, "The B. R. T. is spending the money and they have to bear the storm."

Q. He was willing they should have it? A. Apparently. He must have been. He voted that way.

Q. He told you he was going to, didn't he? A. No, sir, he didn't. He never told me about any vote he ever took or made.

By Chairman Thompson:

Q. Were you surprised when Cade came to you? A. Beg pardon?

Q. Were you surprised when Cade came to you? A. Was I surprised?

Q. Yes. A. What do you mean?

Q. I mean that—I was asking you? A. When he came to me when?

Q. The first time, and talked to you about these things? A. Was I surprised?

Q. Yes. A. Why, not exactly, no.

Q. You had called him and asked him to come, hadn't you? A. Yes, sir; I think I saw him before I called him, several times, before that.

Q. Therefore you were not surprised? A. When he came?

Q. Yes. A. No, sir; I wasn't surprised.

Q. During all of this time you were in daily communication with Wood?

Q. What? A. No, sir; I wasn't.

Q. Well, you were in very frequent communication with him? A. I probably saw him once a week.

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Q. More than once a week? A. I might have seen him twice.

Q. More than that? A. No, sir, the only time I saw him at the other office, now and then some mail would come for him at my office.

Q. Never mind the explanations. We are getting at the times you saw him, and you saw him two or three times a week? A. I wouldn't say that, Senator.

Q. Well, you just did say it? A. I might be in some times two or three times a week, but not all the time.

Q. And besides that, you telephoned to him? A. Not so much. I telephoned very little to him. I did telephone to him, yes.

Q. And he telephoned to you? A. Yes, sir, he did.

Q. All the time using the private numbers? A. Not all the time. He used the outside phone as much as on his own private number.

Q. And he used to call you on your private number? A. Either that or the outside number.

Q. You were pretty familiar with Wood's ideas, and attitude on this signal thing, weren't you? A. I fished them out quite a bit, and I was doing that for the benefit of Mr. Cade.

Q. You were doing it? A. Yes, sir.

Q. And you knew where he stood? A. Not on the vote or how he was going to act on it.

Q. You talked with him about it, didn't you? A. Well, yes. I talked with him about it.

Q. You had to talk with him in order to fish him out? A. Yes, sir.

Q. And you talked with him about the things that were a part of the award of the contracts on the Center Street Loop, and also on the Fourth avenue? A. No, sir; I didn't talk about the Center Street Loop, because that was done long before Mr. Wood got there.

Q. You had a little talk with me this morning? A. Yes, sir.

Q. And in that talk you said you believed Mr. Sidney G. Johnson's story absolutely, didn't you? A. Yes, sir, I believe there was something the way Mr. Johnson told the story, there was some truth to it.

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Q. You said it was all true. A. I said it sounded true.

Q. Why does it sound true? A. That office down there, and Mr. Johnson had dealings with him before that, and he called Johnson up, and Johnson met him several times, and I see Johnson quite a few times, and I never spoke to him about Wood, and he asked me several times "How is your friend Wood?" and I said "I see him occasionally," and he never said he went to see him at the Public Service Commission.

Q. Wood was your friend? A. He was at that time.

Q. Johnson was not particularly your friend, and he was a sales agent for a concern you were trying to do business with? A. I didn't talk business with Johnson at all.

Q. Wood was your friend? A. Yes, sir.

Q. You talked with him? A. Yes, sir.

Q. And in those conversations didn't he mention Johnson? A. Yes, sir; he wanted to know if I ever seen Johnson, and I said occasionally, and he never inferred to me he had met Johnson.

Q. And he told you he had seen Johnson, didn't he? A. No, sir, he never told me.

Q. Let us talk truthfully about it; you knew all about what was going on? A. No, sir; he never told me he had seen Johnson.

Q. Do you think it was possible Wood was getting near enough to you to talk about the Simmens patent, and the B. R. T. officials and what he was wanted to do and he was doing — you don't think it was possible he wouldn't talk to you about Johnson at this time? A. The only man he spoke about was Howe, as to the General Railway Signal. He asked me if I had seen Johnson, and I told him I would meet him in the building.

Q. What did he say about Mr. Howe? A. Mr. Howe was the chief engineer, and came to describe the Simmens system to him.

Q. What did Wood tell you about Howe? A. Nothing except that he saw Howe, that is all, and wanted to know who Howe was, and I told him he was one of the best signal engineers I knew of, and a very brainy man, and that was my recommendation of Howe.

Q. Did he tell you the conversation he had with Howe? A. Except Howe described by sketches or something this system. He

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asked me if I knew Howe, and I told him I knew him by reputation and met him two or three times, and that is about all.

Q. Well, that was in reference to speed control? A. I believe it was.

Q. You continued to be intimately friendly with Wood? A. I wouldn't say intimately friendly.

Q. But he was your friend? A. Well, I don't know as he was such an awful friend, at that.

Q. Since you have found out about the fifteen hundred dollars? A. The way I had to take that business over, I wouldn't say about the fifteen hundred dollars.

Q. You didn't see any halo on Wood after he got to be a Public Service Commissioner, you just knew him as Wood, just as you had before? A. Yes, sir, practically.

Q. And talked to him the same as before? A. Yes, sir.

Q. The same old ball player, and the same old fellow you knew? A. Yes, sir, twelve-year-old kids in the Bronx do that.

Q. And you knew all about the signal business, and he did? A. He knew more about the signal business in the Public Service Commission than I did.

Q. But you knew him just the same? A. Yes, sir.

Q. And you could talk to him any time you wanted to, just as you always had? A. Not any time. When I could see him, I could, and did.

Q. Were you startled when Mr. Cade made a proposition to you to give you some change in this matter? A. Not necessarily, no.

Q. That didn't surprise you? A. No, sir.

Q. Why not? A. That is — if I could take and use my personal influence with anyone to get some business like others have done, and they all help each other, and get away with it, and get a contract, and orders, and sometimes you get something and sometimes you don't.

Q. You say that you were not startled when he made a proposition to you? A. No, sir —

Q. And you didn't —? A. He didn't make a proposition. He told me if he could make a proposition he would like to make one.

Q. He promised to give you some change? A. He said if he got the contract he might see that I got something out of it.

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Q. You didn't object to getting something out of it? A. If I got the business, I would have been satisfied.

Q. You didn't object to the change, either, did you? A. If somebody throws it at me, I am going to take it.

Q. And that thing didn't startle you at all? A. No, sir.

Q. And did not surprise you? A. No, sir.

Q. Is it an ordinary transaction with you to have somebody offer you change? A. I haven't received any that way yet.

Q. Still, it didn't surprise you? A. I wouldn't say it surprised me.

Q. When Wood talked about the Simmens signal, did that surprise you? A. I don't know what you mean by surprised me.

Q. Startle you — were you surprised when Wood was talking to you about the signal, such as he did? A. He didn't talk to me about the signal until after he got the recommendations of the B. R. T.

Q. You have already testified you had a lot of talk with him about the signal and got the dope for him? A. Yes, sir.

Q. Did that surprise you, he was interested? A. Not necessarily, except he wanted to know all about it, and the merits and demerits.

Q. You knew the signal was not any good? A. No, sir; I didn't know that. It was the concensus of opinion of engineers it wasn't developed or practical.

Q. You told me in the other room it was not any good? A. I heard that since that.

Q. That was your opinion then? A. In a way, I didn't think it was any good.

Q. Your thinking it wasn't any good, wouldn't that surprise you at Wood's digging into it as much as he did, and wanting so much dope on it? A. I might have been a little bit surprised, yes.

Q. At that time, you had a lot of talks with him, and you were trying to feel him out? A. Yes, sir, and see how his mind ran on the thing.

Q. You had this talk with Cade in mind all the while? A. You bet your life I did.

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Q. You must have mentioned that to Wood, didn't you? A. No, sir; I never mentioned Cade's name to Wood.

Q. Why not? A. Because it was my own little business to get something out of Cade if I could.

Q. You talked with him about the General bid, and you talked with him about the Federal bid? A. I didn't, no, except the Federal was low.

Q. You knew it was a scrap between the Federal and the General? A. Yes, sir.

Q. And Wood knew that, and it was quite an exciting scrap, wasn't it? A. Yes, sir.

Q. That is the largest signal contract that has ever been let, wasn't it? A. Why, I don't know as the largest one. I think the largest was the New York Central contract.

Q. With the exception of that, it was the largest one that has ever been let? A. I think it was.

Q. And it was regarded as a pretty big proposition at that time, amongst all of you signal fellows? A. I am not in the signal atmosphere, exactly, and I have been out of it for years.

Q. You were running around and looking up dope? A. I wanted to get him some information on the automatic stop Simmens system.

Q. During this time do you want to have it appear Wood did not talk to you about the Federal at all? A. I testified he did say the Federal would probably get that job, inasmuch as they were low.

Q. In your talk with him you tried to get the contract for the Federal, of course? A. I couldn't get the contract.

Q. You wanted the Federal to get it? A. Absolutely.

Q. And you must have done something to try and see that they did? A. I used my personal influence, and Wood said the Federal had a good system, and some good stuff.

Q. And you did talk to Wood about that? A. Yes, sir; but I didn't mention Mr. Cade's name to Mr. Wood. He did not know why I talked about the Federal, I don't think.

Q. You discussed that with him whenever you talked with him, didn't you? A. I wouldn't say that, whenever I talked with him.

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Q. A great many times? A. Occasionally I would speak to him about it, and speak on other subjects besides that.

Q. Didn't Wood say to you this in substance, at that time? — Didn't Wood tell you to find out what the Federal would do? A. No, sir, absolutely no. Mr. Wood never asked me to ask what the Federal would do.

Q. Didn't he say that in substance to you? A. No, sir.

Q. Didn't he tell you to feel them out? A. No, sir.

Q. Or words to that effect? A. No, sir, he didn't. Mr. Wood did not know I was talking with Mr. Cade, absolutely, no. Mr. Cade —

Q. You mean to say that Cade approached you with this thing? A. I spoke to Cade about the Center Street Loop, and he wanted I should make an appointment for him and Wood and have a luncheon together.

Q. Do you mean to say Cade was the fellow approached you on this proposition? A. No, sir; I approached Cade for business, if he got any of that business.

Q. How did you happen to approach him? What was the hunch led you to approach Cade? A. That is the way when a contractor on a job like that is low, everybody who has something to sell that contractor will pick that contractor up. Being low, it looked like he was going to get it, and I wasn't the only one that approached the Federal Signal Company on that contract.

Q. You told him you would use your influence with Wood? A. Yes, sir; I told him I would help the game along.

Q. What did you say to Wood? A. Simply told him that I thought the Federal Company were a good concern, and I had known Cade a good many times, and they had the contract for the Center Street Loop, and been in the game a good many years, and they ought to get the contract, and they had good stuff.

Q. You told me a few minutes ago you never mentioned Cade's name to Wood? A. I didn't.

Q. You said a few minutes ago you told him Cade was a good fellow? A. I might have mentioned Cade's name in that way. I guess I did in that way, yes.

Q. More than once you mentioned it? A. I don't think so. I told him I knew Cade, yes, sir.

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Q. And you told him you had had a talk with Cade? A. Yes, sir, that is, that way.

Q. And didn't you tell him what Cade told you? A. No, sir, I didn't, because I couldn't tell him what Cade told me, and if I had, I would have said something that wasn't so. Cade told me the most just prior to the contract being awarded, and Cade spit out and told me what he would like to do, and what he wouldn't like to do, and that was the time the B. R. T. recommended certain features about the system, and he spit it out.

Q. What did Cade spit out? A. He said if he had the handling of the thing for Renshaw and his friends, he could put the thing across.

Q. What do you mean by that? A. Draw your own inference.

Q. What was your inference? A. It was testified Mr. Wood made a proposition to him. I don't know whether he did or not. It was testified Mr. Wood made Mr. Cade a proposition which I don't know anything about.

Q. What was your inference from Mr. Cade's telling you he could put the thing across if he had some real people? A. He might have had some inside information.

Q. What did you get from that? A. Try to get some real people to handle it.

Q. What do you mean? A. People to go to somebody.

Q. What do you mean by that? A. Bribery.

Q. Who would he go to, to bribe? A. I don't know. There were five men on the Commission.

Q. And you knew they stood two to two? A. I didn't know that.

Q. If they stood two to two, except Wood, who would he go to to bribe? A. I couldn't tell you that.

Q. What would you think, if you were going to it, and getting the real fellows, who would you go to? A. I guess the principal would talk to the principal, in a case like that.

Q. Who is that? A. The man he has to see to put the thing across.

Q. Did you have Wood in your mind at that time? A. No, sir, I didn't. It might have been some other Commissioner.

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Q. It was perfectly well understood how the other four were going to vote, wasn't it? A. I don't know.

Q. It was well understood how the other four were going to vote, wasn't it, two on one side and two on the other? A. That was the way the vote was finally made, I guess.

Q. That is the way you knew it was going to be cast? A. No, sir.

Q. Didn't Cade tell you he would have to have Wood's vote? A. No, sir. So help me God, I didn't know that. Don't put those words in my mouth. I didn't know that.

By Senator Lawson:

Q. Mr. Banks, did you open up that jackpot this morning while I was absent that you talked about the other night? A. Jackpot?

Q. When you and I went down the elevator the other night? A. Yes, I told the Committee what actually occurred between Mr. Cade and I.

Q. You said a little more to me the other night, didn't you, a little more to me about somebody else's interest? A. I don't remember, Senator. Do you mind drawing me on, or telling me something?

Q. Did you say some Supreme Court Judge was interested? A. I got an idea there was some Supreme Court Judge also interceded for the Federal Company, yes, sir. I don't know who he was, but there was some Supreme Court Judge did call on McCall in reference to the matter, I believe.

Q. He hadn't anything to do with Cade and the Federal and Mr. Wood, had he, the Supreme Court Judge? A. I think he did.

Q. Tell us about it? A. I simply — The way I got that, Mr. Cade, I believe, said certain people way up in the judicial end of it were interested, and I think Cade sprung that on me. He told me a lot of stuff at that time.

Q. What was it? A. That is about the substance of it, and he mentioned the names that were interested with Mr. Renshaw. That is all there was of it. It was Mr. Renshaw was handling that thing with these gentlemen, and they were handling it, as I understand, with Judge McCall, and Cade told me Judge McCall would probably deliver the goods.

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Q. That is what we want to know. A. That is what he told me.

Q. You remember I told you if you would tell the truth we would get at this thing in the real way? A. Yes, sir, that is what I told you, and that is it.

Q. What did you understand Judge McCall's connection with this proposition to be? A. Why, that he was friendly with the Federal, that is about all. As to any other proposition, I don't know. I won't say anything I don't know. He was very friendly with the Federal, that is all. Mr. Cade also told me that McCall practically delivered the goods on the Center Street Loop to them, and Cade told me that, irrespective of their being low bidders.

Q. Did Cade tell you where he got that information from? A. No, sir.

Q. Cade told you a whole lot more than you have told us here, didn't he? A. That is about all there was to it. I have known Cade in the signal game a good many years, and I know he has quite a reputation in the signal business.

Q. Quite a reputation for what? A. If he goes after something he generally gets it, Jack Cade does. He finds some way of getting it.

Q. And he went after you to get Wood, is that the idea? A. I don't know whether he went after me to get Wood or not.

Q. Did he keep up his reputation? A. I have told you all there is to it.

Q. Did he live up to his reputation? A. If he has Wood on what they claim he has Wood on in the Public Service Commission office, I think he has Wood.

Q. He used you as an intermediary? A. I never knew Wood saw Cade, or Cade saw Wood.

By Assemblyman Burr:

Q. He sent you to get Wood, didn't he? A. Who?

Q. Mr. Cade. A. No, sir; he sent me to use my influence with Mr. Wood, and I did.

Q. Did you know any other Commissioner? A. No, sir.

Q. You did not stand around the shower bath at the athletic field with any other man at the athletic field? A. No, sir.

Q. You are pretty familiar with Wood? A. Yes, sir; I know him pretty well.

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Q. And Cade wanted you to get Wood? A. No, sir. Cade told me he couldn't make any proposition, but I as a supply man could get a commission for it.

Q. What did he say to you? A. Promised to give me a commission if I could use my influence.

Q. And he sent you after Wood and told you if you did there was a piece of change in it for you? A. Yes, sir, that is about it.

Q. And you tried to get him? A. Yes, sir, I talked about signals to him.

Q. And you did not get him? A. No, sir, I didn't.

By Chairman Thompson:

Q. And you didn't get him? A. No, sir.

Q. Why? A. I don't know why not.

Q. Were you surprised when you did not? A. No, sir. He has his own mind in the matter, and he can do as he pleases. I was under no obligation to him.

Q. Did you use every effort you could to get him? A. Yes, sir, in talking Federal Signal to him.

Q. You used every effort you dared to use, with your acquaintance with him? A. No, sir, I might have said, "You ought to do something for taking that thing off from your hands."

Q. You could say anything to him you liked? A. No, sir. I never got that far with him.

By Assemblyman Burr:

Q. You borrowed money and loaned money to him? A. No, sir. I borrowed, but I never lent him any, only one morning a few dollars when he was short.

Q. You are pretty intimate with him when you put your hand in your pocket and loan him money? A. Never loaned any money after got through the Northwestern Construction Company.

Q. You were just as intimate as two men could possibly be? A. No, sir.

Q. You met Sundays and stayed in the rubbing room together, and stood under the shower? A. I seldom stood under the shower, because I seldom took a shower the same place he did.

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Q. You couldn't get him for Cade, could you? A. I don't think there was enough in it for me to try to get him.

Q. Was that the reason? A. Cade promised me some business, but I didn't get anything out of it.

Q. Did you tell Wood what was in it for him? A. No, sir, there was no figure mentioned.

By Chairman Thompson:

Q. What was the reason you didn't offer him any particular figure? A. There was no sum to offer.

Q. You did not know the other Public Service Commissioners well enough to talk with them? A. No, sir.

Q. You did know Wood well enough to talk to him? A. Yes, sir.

Q. You talked with Wood about this matter of the contracts, before you saw Cade, didn't you? A. No, sir.

Q. On some subject in reference to the contracts? A. No, sir; I never talked to Wood about the signal contracts until the bids were sent in and opened, and that is the time I talked to Cade.

Q. You were talking to Wood over his private telephone before you called Cade on his, weren't you? A. About this?

Q. I don't ask you about it, but you were talking with him on the private telephone before you called Cade on his private telephone, weren't you? A. I have talked with Wood lots of times long before I talked with Cade.

Q. You met Wood and talked with him before you talked with Cade? A. I might have, yes, sir.

Q. And at a time when this subject was up, after these bids had been opened? A. I might have, yes, sir.

Q. At that time, didn't you have some talk with Wood about the Federal people? A. I don't think I talked real hard on Federal to Wood, except when a supplemental bid was to be put in, or the bids were thrown out, and I was real peeved, and I talked real hard about a raw deal I thought the Federal got.

Q. Didn't Wood tell you Cade had called on him? A. No, sir.

Q. Didn't he tell you Cade had been to his office? A. No, sir.

Q. And that he had talked with Cade? A. Absolutely no; no, sir.

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Q. Didn't he tell you something from which you understood Cade had called on him? A. No, sir, and Cade didn't tell me either, that he saw Wood. Cade didn't tell me and Wood didn't tell me.

Q. You are intimate with both of them? A. What about being intimate? I wasn't that intimate he told me who his daily callers were.

Q. Why did you call Cade on the telephone and ask to see him, and then see him and talk about Wood's influence; why did you call him, and what was the reason? A. I called Cade up right after the bids were opened, before there was any—

Q. Why did you happen to do it? A. I had that in mind, of getting some business from Mr. Cade if they got that job, and they were low bidders, and I had a perfect right to do that, and I am in the supply business.

Q. Tell us the truth as to why you did it? A. That is it.

Q. You called Cade and Cade came and saw you and talked with you? A. Yes, sir.

Q. Where? A. No. 1 Dey street.

Q. And came to the saloon? A. We always meet there.

Q. And it is a regular saloon? A. Yes, sir, and a little booth in the side.

Q. And when he got there he talked about your using your influence with Wood; that is true, isn't it? A. Yes, sir, but—

Q. In that conversation there was something said about some change? A. That was a subsequent time.

Q. What? A. That was while the thing was being fought by the B. R. T. and the Signal Company.

Q. At that time? A. No, sir, not at that time. I don't think it was. I think it was at a subsequent time.

Q. Didn't you tell us it was at that time? A. No, sir, I think it was at a subsequent time.

Q. The very first time you saw Cade, you talked about using your influence with Wood — you don't believe folks will believe you didn't talk with Wood about the fact Cade had talked with you? A. I didn't think I did talk at that time to Wood. It was at a later date.

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Q. When did you talk to Wood about it? A. It looked to me such a foregone conclusion the Federal would get it, inasmuch as they were low.

Q. When did you talk with Wood about it? A. It must have been a later date.

Q. But you did talk with him about it sometimes? A. A later date when the bids were thrown out and new bids made, and then I was very active and talked hard that the Federal ought to get the job.

Q. And told him what was in it? A. No, sir, because I didn't know myself what was in it. The only thing I knew was in it was business for me.

Q. You knew there was something in it? A. That is what Cade promised me, and I didn't know anything about a cash sum and there was nothing of that kind spoken of.

Q. And you told that to Wood? A. No, sir, I didn't tell Wood that. There was nothing to that.

Q. Didn't you tell Wood there was nothing to it? A. I don't think Wood knew why I talked about Federal signals, and why I was so interested.

Q. Didn't you tell Wood Cade didn't make any proposition that was valuable and there was nothing in it? A. No, sir, I didn't. I never talked with Wood on these matters.

Q. I wish you would give me some reasonable explanation? A. I talked to Wood purely on signals, and also the Federal Company ought to have that contract.

Q. Why? A. They were low bidders and should have had it.

By Senator Lawson:

Q. Don't you suppose he knew that as well as you? A. I wanted to feel him out.

Q. How did he feel? A. Felt the same way. They got the last job and were low, and he wouldn't tell me his own mind.

Q. And do you usually send for a man you want to sell goods to and tell him to meet you at No. 1 Dey street? A. He is a busy man.

Q. Isn't it customary when a man wants to sell a man goods he goes to see him and doesn't telephone him or send a messenger to

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come to him? A. I don't know as I put it, "Come to me; I want to see you." I probably said, "Can I see you to-night at the usual place, No. 1 Dey street," or wherever it was. That was probably the way it happened. He is down at 30 Church every day. I didn't say, "Come to see me," or pull him and say, "Come." I wasn't no bag man for anyone at that time.

Q. At that time? A. No, sir, or any other time.

By Assemblyman Burr:

Q. What do you mean, you were not a bagman? A. A bag man "Come and see me."

Q. All your testimony leads me to think you are a bag man for someone? A. You can have that belief.

Q. When you were pressing Mr. Wood for his vote for the Federal, did he ask you what your interest in the matter was? A. No, sir.

Q. He never asked you why you interested yourself? A. No, sir.

Q. Or why you came to see him? A. He might have drawn some conclusions, but he never asked me — Mr. Wood is a peculiarly built man, and you gentlemen have all seen him a good many times, and is a mystery to a lot of people.

Q. Is he? A. Yes, sir, he is.

Chairman Thompson.— Is he a mystery to you?

Mr. Banks.— Yes, sir, and always has been.

By Senator Lawson:

Q. You mean on the fifteen hundred dollar Kansas City matter? A. No, sir. That is brought up so often, I don't like it. Mr. Wood is a mysterious man.

Q. One of those mysterious men who carry bundles? A. He never asked what my interest was, and there was something else on his mind, besides that, I think.

Q. Mr. Wood knows you pretty well, don't he? A. I think so.

Q. Do you think he thinks you are a mystery? A. He probably does, after he hears my testimony.

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Q. Don't you think Mr. Wood has intelligence enough to wonder why you were so active in talking up the Federal Signal Company, without asking you what there was in it? A. Yes, sir.

Q. Did he ask you what there was in it? A. No, sir.

Q. Did you tell him? A. No, sir, I don't know what I was going to get myself.

Q. You have ratios on those things, do you not? A. No, sir. The only thing I was promised, if they got the contract I might get some of the supply business in reference to that contract.

Chairman Thompson.— You knew you were going to get something else?

Mr. Banks.— Cade said if he got the contract he would see I got something else.

By Assemblyman Burr:

Q. Couldn't you have said, "If the Federal gets this contract, I will be able to sell Cade some supplies?" A. He might have said, "How much are you going to get out of it?"

Q. Who? A. Commissioner Wood.

Q. How much he was going to get out? A. No, sir; how much I was going to get out of it.

Q. Wouldn't he say, "Banks, old boy, how much is there in it for you?" A. No, sir, he didn't. Mr. Wood was very distant on the whole thing to me at that time. I don't know why, and he didn't care to talk to me an awful lot, only he wanted the dope from me on the signal system.

Senator Lawson.— Did you say anything to him about the fifteen hundred dollar proposition?

Mr. Banks.— I didn't think about it at that time.

By Chairman Thompson:

Q. What made you think Commissioner Wood might ask that question? A. What is that?

Q. About how much you were going to get out of it? A. He didn't ask me that.

Q. What made you think he might? A. If I went too strong after him, he might ask me that, because Mr. Wood had been in

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the supply game before that, and knew such a thing was handled in that way.

Q. And he was your friend? A. I wouldn't say that. I wouldn't say he was my friend.

Chairman Thompson.— We will take a recess until 2.30, and Mr. Banks is directed to be back at that time, and all other witnesses are requested to be present at that time. I want to say I have been advised by the process-server, that Mr. Simmens, the president of the Simmens Automatic Signal Company, is in Toronto, and the treasurer of the concern is in Pittsburgh, and we cannot serve a subpoena. We will suspend until 2.30, and the witnesses are directed to appear at that time.

Whereupon, at 1:30 o'clock P. M., a recess was duly taken to 2.30 o'clock P. M.

AFTER RECESS.

A quorum being present.

Senator Towner presiding.

WILLIAM C. BANKS on the stand (recalled).

Examination by Mr. Lewis:

Q. Is the Northwestern Construction Company in business now, Mr. Banks? A. Why, they still have a charter, yes.

Q. Doing business? A. No. They are not doing any business.

Q. How long since it went out of business? A. Ever since the N. W. Equipment Company took over their business of the patent, which they owned, which was assigned to them, and furniture, and so on. The company has not done any business. Their name is still on the door of the office of the company. The office of the company is still kept in the same place.

Q. Who owns the N. W. Equipment Company? A. It is owned by my brother-in-law, my wife, and Mr. Trainer, treasurer of the company.

Q. You have an interest in it, haven't you? A. I have one share of stock, that is all. I got all that stuff of Mr. Trainer.

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He got in there on account of advancing me some money at different times, and he is treasurer of the company.

Q. Are you a director of the company? A. Yes, sir.

Q. President? A. Yes, sir.

Q. And only own one share of the stock? A. Yes, sir.

Q. Are you execution proof, is that the reason? A. I don't know whether I am or not.

Q. Is that the reason you carry the stock in your wife's name? A. Well, there might be something to that.

Q. Been sued a good many times? A. Once. An old company was sued, the old Banks Electric, and the treasurer of the company and myself. And there is a judgment against the old company.

Q. And against you? A. Yes, sir.

Q. What is the telephone number of the N. W. Equipment Company? A. 3133 Cortlandt.

Q. Can you find it in the book? A. Yes, sir.

Q. That is the number of the Northwestern Construction Company, too? A. We have kept the name of the Northwestern in the telephone book.

Q. What is your private number? A. Cortlandt 645.

Q. That in the book? A. No, sir. Unlisted.

Q. What was Wood's private telephone number? A. I don't remember that. It was four numbers. I can't remember. I have not used them in months. I have not used them in six months.

Q. That is his office number? A. That is his private phone.

Q. Private at the office? A. At the office of the Commission.

Q. Did he have a telephone number at 43 Exchange place? A. I think he had the old number that he had when he had his private office. I am not sure. I think that was Hanover 600. That was the old number. I am not sure of that.

Q. And then he had a private telephone number up town somewhere? A. I don't know about that.

Q. Didn't you? A. No.

Q. Never called him up up-town? A. Never called him up except at the Country Club where he resides.

Q. Have you a private telephone number at your house? A. Yes, sir.

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Q. And one at your office? A. Yes, sir. Always had a private telephone number at my house for years.

Q. The number is not in the book? A. No, sir.

Q. Neither place? A. No, sir.

Q. Pretty expensive, isn't it? A. Three to four dollars a month.

Q. Limited number of calls? A. Yes, sir.

Q. Used more for calling in than it is for calling out, isn't it? A. Why, either way, I should say — fifty-fifty.

Q. Do you think Wood ought to be in jail? A. Well, I wouldn't like to see any man in jail. If he has committed a crime, why, put him there.

Q. You have said that he ought to be in jail? A. I did not say that.

Q. What did you say? A. I said if the man has committed an offense like what has been testified to here, I suppose it is a criminal offense, why, he ought to be where they put criminals.

Q. Is that the way you said it? A. I don't know as I said that to anybody particularly.

Q. You know you spoke about it to-day, didn't you? A. To whom?

Q. Haven't you said to-day that Wood ought to be in jail. A. I don't think I said that.

Q. What? A. I don't think I said that.

Q. Didn't you say it was all up with Wood and he ought to be in jail and probably would be? A. No, I don't remember of saying that, Senator.

Q. And didn't you say you got yourself in wrong? A. I don't see where you get me in wrong.

Q. Didn't you say that, in attempting to shield Wood?

Senator Lawson.— The Chair is cautioning you to stop and think before you make answers to the various questions counsel asks you, because it is a matter of record that you sometimes reverse yourself. I would ask you to go a little bit slow and think before you answer these questions, so you may answer them correctly.

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A. Well, I am answering the questions as they come to me. I do not remember saying that, Senator.

Q. Do you swear you did not say it to-day? A. No, sir.

Q. Swear to it? A. I will swear I did not swear he ought to be in jail.

Q. Did you say anything about being in jail, use the expression "in jail" in connection with Wood? A. I don't think I did. I think somebody else made that remark here that he ought to be in jail.

Q. You did not make it? A. I don't think I made it, that he ought to be in jail. Somebody else made that remark.

Q. Do you think he ought to be in jail? A. Well, if he is found guilty, yes.

Q. Well, do you think he is guilty? A. Why, that is for the District Attorney and for the court to decide.

Q. What is your thought on it? A. I wouldn't say he was guilty from the testimony I have heard. He might be, for all I know. That is not my province to testify so.

Q. Do you think he is guilty from what you know rather than from what you heard? A. I don't think he is.

Q. Don't you think he has done anything for which he ought to be in jail? A. Well, if he has called up Mr. Johnson like was testified to, if he asked for a consideration to do a certain thing on that Center Street loop, if he has done that as a public officer of the State of New York —

Q. You want to remember he is likely to read what you say. A. I don't care. And it was so found to be a fact by the court, I do not think a jail sentence would do him any harm.

Q. You have observed the Chairman's advice and taken the second thought this time? A. That is up to the other higher tribunals to certify.

Q. You were Wood's closest friend, weren't you? A. I wouldn't say that.

Q. Don't you think that is so? A. No.

Q. Don't you think you spent more time with him than anybody else? A. No, I wouldn't say that.

Q. You spent a good deal of time with him? A. I spent every other Sunday with him the weather permissible.

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Q. And from three to four hours at a time? A. Unquestionably.

Q. Had your meals with him? A. No, very seldom.

Q. Sometimes? A. No; very seldom.

Q. Spent evenings with him? A. I used to go home to dinner. I seldom spent any evenings with him.

Q. Meet him sometimes down to No. 1 Dey street? A. No, sir; never met him there to my knowledge. He does not drink. Not a drinking man. That is one virtue he has.

Q. He has no small vices, has he? A. Don't smoke and don't drink, and he says he is a woman-hater, so I don't know.

Q. Do you doubt that at all? A. Well, he says so. I cannot testify to the contrary.

Q. Well, now, who was any closer then to him than you were? A. I think he has one — or no one he thought a whole lot of, Mr. Freedman.

Q. Andrew Freedman? A. Yes, sir.

Q. Was he with him a good deal? A. I know when I was associated with him he used to play a lot of golf.

Q. Whereabouts? A. I believe he belonged to the Dunwoodie Club. He was a member up there, and different clubs in Long Island and New Jersey. I know several times he used to come around and tell me he went to play golf.

Q. Did you know of his playing with Mr. Freedman? A. Yes. I know of his playing with Mr. Freedman.

Q. See them playing together? A. No, sir, except from hearsay.

Q. He told you? A. He told me.

Q. Well, who else was his friend? A. Well, I think Judge Tierney is a very close friend of his up in the Bronx.

Q. How close? A. Well, they have known each other a good many years and they are members of the same club — The Schnorrer Club, The Fordham Club and I guess The Northside Democratic Club.

Q. How long had he known Tierney, do you know? A. No. Long before my time, I guess. Probably twenty years. Probably longer than that.

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Q. How long have you known him? A. Fourteen or fifteen years. Since 1900. Since he played on the Schnorrer Club of which I was manager.

Q. Tierney was responsible for getting the job for him? A. So he said.

Q. Did Wood say that? A. Wood said that in his testimony, that Tierney was his sponser.

Q. Did you know anything about it until he was appointed? A. I did not know anything about his appointment until about two or three days prior to his appointment, which must have been around the 19th or 20th of May. When he informed me he was appointed or expected to be appointed, I don't know which, and that he turned his business over to his brother and wanted me to talk to his brother.

Q. What about? A. The Northwestern Construction Company.

Q. What did he mean by talking to his brother? A. He wanted to get out of it and wanted me to talk turkey to his brother.

Q. Didn't he tell you he wanted you to take the business off his brother's hands? A. No, sir. He wanted to sell it to anybody he could and wanted me to negotiate the sale. At that time we had an agreement with the Columbia Machine Works to manufacture certain products which we had and he thought of course, the Columbia people might take it up.

Q. Did you try? A. I thought pretty well of the thing at the time myself. I spent several years at it and I thought it would be a pretty good thing to get it myself.

Q. The business was not profitable? A. There was enough business to pay my expenses.

Q. You had the N. W. Equipment Company at the same time? A. No, sir.

Q. That was organized later? A. That was organized on the 15th of June. The charter came through the 15th of June.

Q. After buying the Northwestern Construction Company why did you junk it and organize the N. W. Equipment Company? A. For this reason; the Northwestern Construction Company was a wrong name for the business we were doing, absolutely wrong. The Construction Company was always mixed up with construction work. We were not doing any construction work. We were

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purely and simply a supply company and I thought if we formed a new company — The Northwestern Construction Company owned a trade mark N. W. and I thought that would be a good name. In view of the name and all the products was named N. W., and that is the reason I formed a new company. And I had other reasons in mind.

Q. Then about all you got out of the $3,000 investment was the trade mark? A. And the office furniture.

Q. How much is the office furniture worth? A. I should judge if you had to buy it would cost about a thousand dollars.

Q. A thousand dollars worth of office furniture? A. Yes, all the junk that would go with it, two or three safes, typewriters and all that. Worth a thousand if you had to have to buy it new.

Q. What would it sell for? A. Three or four hundred.

Q. As much as that? A. Hard to say what you get for second-hand stuff.

Q. Wouldn't have got a hundred dollars, would you? A. Yes, you would have got that much for the typewriters.

Q. What is the capital stock of this new company? A. Five thousand dollars.

Q. You had to pay legal fees to draw a new charter? A. Yes. I paid all that to my old patent lawyer, Mr. A. G. Vermillian, 5 and 7 Beekman street.

Q. Did he incorporate the company for you? A. Yes, sir, and wrote up all the minutes.

Q. You could have incorporated this new company without buying out Wood's company? A. But Wood's company had certain amount of assets, patent rights in the name of Mr. Wood.

By Chairman Lawson:

Q. Tell us about those? A. Anything I designed or got a patent application on or patent for I assigned to Mr. Wood. He paid the prosecution fees and Mr. Wood promised me if anything was done in those things or anything made out of it, we would go fifty fifty. He took a lot of hard work to show the trade what these devices were. That was missionary work.

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Examination by Senator Lewis:

Q. Right there — who was the missionary, you or Mr. Wood? A. Well, I guess both of us. I was the principal man I guess. I knew the trade better than he did. He did not know the trade at all. He was a Wall street man. He did not know the trade. He does not today.

Examination by Chairman Lawson:

Q. How do you class him as a Wall street man? A. He had been down on Wall street and Broad street with stock brokers and did a general broker's business ever since I have known him. He was known to us in the Bronx as being a banker and broker.

Examination by Mr. Burr:

Q. And you broke him in in the new game, didn't you? A. I wouldn't say that.

Examination by Chairman Lawson:

Q. What firm of bankers was he with? A. Havemeyer and Wood.

Q. Were they bankers or promoters? A. I don't know. They might have been promoters and might have been stock brokers. Wood and Havemeyer — I think there was a man named Kearney with him at one time.

Q. Kearney, was he one of his intimate friends like you were? A. Yes, in my class.

Q. Give his full name? A. I don't know his full name except he had a stock exchange seat.

Q. Where does he live? A. I don't know. This is only hearsay. I got this from other people.

Q. You managed this company, did you, for Mr. Wood before you bought it over? A. No. He wouldn't let anybody manage it. He would manage it himself. He would not have any manager.

Q. But you were pretty familiar with it? A. Familiar with the business of the company.

Q. Familiar enough to pay three thousand dollars for some furniture and trade mark? A. There were some patent rights in

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his name and of which the attorney of record can testify, and assigned to the N. W. Equipment Company.

Q. But which you have bought back? A. I think his half interest was worth that to me at that time. I had to develop it.

Examination by Mr. Lewis:

Q. What did the patents cover? A. Why certain lines of electric connections — solderless connectors, fuses, switches, circuit breakers, a varied sort of electric patents — must have been six or seven.

Examination by Assemblyman Feinberg:

Q. I am interested in that piece of change which you expected from the Federal Company. Had you any idea what piece of change you would be entitled to if you put that over? A. There was nothing mentioned.

Q. Had you any expectations at all? A. No, sir. I did not expect to get it if the thing had been put across.

Q. You did not expect to get anything at all? A. I expected to get some business, but it would have been hard work probably.

Examination by Chairman Lawson:

Q. How much was the contract that was to be put across that you were to get a piece of change on? A. I don't know the amount now.

Q. Was it a million and a half? A. No.

Q. Was it the Center street? A. No, sir.

Q. The Fourth avenue? A. The Fourth avenue.

Q. What is the custom in the trade on a million and a half, in your business? A. I couldn't answer that.

Q. Five per cent? A. No.

Q. Two and a half? A. No. I could not answer that question. I don't know what those people give for a thing like that.

Q. You know what the usual thing is in a contract? A. No, I do not.

Q. What is the usual thing? A. The larger the contract — if you go to a signal company and look for a thing like that as Mr. Wood did on that Kansas City and Clay County proposition I understood he was supposed to get five thousand dollars.

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Q. What did that amount to? A. I don't know offhand — sixty or sixty-five thousand dollars. He was supposed to get five thousand dollars. So, judging from that, that would be about five per cent., wouldn't it?

Q. You figure differently if you were waiting? A. All he got he testified to was fifteen hundred.

Q. Then the commission on a million and a half would be a big enough bonus to split up in good shape? A. I don't think they would give that much money. I don't think they would have that much profit in the job.

Q. You don't profess to know anything about the signal business, do you, I mean the technical part of it? A. I have been identified with the signal game a good many years, and I have seen a lot in the business. I do know something about it. I am not an expert on signal matters.

Q. Well, what product, if any, that you made or handled, could be sold to the Signal? A. Fuses, connectors, switches, electrical switches.

Q. How much were they? A. On a job like that, might amount to forty or fifty thousand dollars, without any trouble.

Examination by Mr. Feinberg:

Q. You knew there was a very keen competition between the signal companies to get these contracts, did you not? A. No, I did not, inasmuch as the Federal being so low.

Q. That does not answer my question. You have been identified with the signal game a good many years? A. Yes, sir.

Q. And you knew on the subway the companies were bidding for these contracts? A. Yes.

Q. And you knew some of the sales agents? A. Yes, all of them.

Q. And you knew it was a big feather in their hats to land one of these contracts? A. Yes, sir.

Q. And you knew they were ready to spend money to get them? A. Yes, I would say yes.

Q. You connected up with Cade? A. Yes, sir.

Q. You knew Cade? A. Yes.

Q. And you were very friendly with him? A. Yes, sir.

Q. Met him at this No. 1 Dey street place? A. Yes.

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Q. And very friendly and talked it over with him? A. Yes.

Q. And he knew you knew Wood? A. Yes.

Q. And you knew that you were very friendly with Wood? A. Yes.

Q. And that your services were worth a great deal of money if you landed a million and a half contract, whether they agreed to pay it or not? A. Yes,— if —

Q. Answer my question? A. Yes.

Q. How were you playing the game — were you playing the game to get this money for yourself? A. I was playing the game to get business out of the job.

Q. You were not going to divvy with Wood on that? A. No, I don't think I would.

Q. If Wood got next to the fact that you were getting some money, do you think he would have made a demand on you? A. I don't know. When you make a demand.

Q. Dou you think he would insinuate that he was entitled to a piece of it? A. If he had, he would not have got it. I was playing for myself, and no one else, for myself and myself only. That was my business to do that.

Q. If you thought you could get the contract by letting him in on it and getting a good piece of change, would you have declared him in? A. You are asking me a rather pertinent question.

Q. It is a very pertinent question. A. It is hard to tell. I don't think so. I don't think I would let him in on it, anything I put across myself.

Q. You would need his vote. A. I don't know whether his vote was the only one to be considered. Apt to be other votes besides his. According to the testimony, there was three votes.

Examination by Chairman Lawson:

Q. You were interested enough to know that the vote of the Public Service Commission was two to two? A. I did not know it.

Q. Didn't you have any talk with Wood about that? A. No, sir. He did not tell me and I had no idea how the vote stood. I did not get that far with him on that question, to know how the vote stood. If I had, I might have made some other proposition.

Q. What other proposition might you have made? A. I might have gone after him a little stronger than I did.

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Examination by Mr. Burr:

Q. You never thought about going to Mr. Maltbie on the proposition? A. I did not.

Q. Your scheme was a perfectly legitimate one? A. Yes, on my side of the house.

Q. Why not consult Mr. Maltbie? A. I don't know as I could have done anything with Mr. Maltbie. I understand the Commission as a usual thing are pretty hard people to reach over there.

Q. Did you find that out? A. I heard that from a lot of people in the trade that tried to see the commissioners, that they are an awful hard lot of people to talk to.

Q. Did you ever try to satisfy your own mind to see whether you could see Mr. Maltbie? A. No, sir.

Q. Or Williams? A. No. I understood from other people that went to see Public Service Commissioners that they were hard people to talk to unless you had an entré.

Q. You could not mention anybody's name that told you that? A. No, sir, not anyone in particular.

Q. You said a few moments ago you thought Wood ought to be in jail? A. If you gentlemen prove what you have got here on him, yes.

Q. You mean if a Public Service Commissioner or public official of that kind would accept a bribe, he ought to be in jail? A. Yes, sir, I think he ought.

Q. That is the cause of the statute of the State? A. I don't know whether that is the statute or not. I have read the papers and I think that is the statute.

Q. What do you think ought to be done with a man attempting to buy a public official? A. I think he ought to go to jail. I think the giver is just as bad as the receiver.

Examination by Assemblyman Feinberg:

Q. What do you think of a man trying to trade on friendship and tries to get his friendship? A. I think that has been so for years.

By Senator Lawson:

Q. You condone that? A. Yes, sir.

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By Assemblyman Feinberg:

Q. My question is, what do you think of a man who will trade upon his friendship and receive money for an act and get that friend to do something that is a public act and he receives the money for himself? A. If he does it within the law — what I mean, if he does it with a clear conscience and that these people should have so and so, and it is above-board. I guess you could enlighten many Public Service Commissioners. I think in this particular case the Federal people got the hinky-dink.

Q. You think it was perfectly legitimate to withhold the fact that you are going to get a piece of change? A. Certainly. None of his business.

By Senator Lawson:

Q. What do you mean by "hinky-dink?" A. We signal boys have some slang expressions sometimes.

By Mr. Burr:

Q. That does not apply only to signal people? A. No.

Q. We have that in politics. A. I didn't know that. I guess many people in politics get that, too, what they call the "hinky-dink."

Q. Did you ever have occasion to approach purchasing agents for large public service corporations? A. Yes, sir. I have seen them, but never approached them on monetary considerations.

Q. Never told a purchasing agent if you could get a contract you would split with him, or anything like that? A. That is a leading question.

Chairman Lawson.— I direct you to answer it — you can just say fifty-fifty.

A. Gentlemen, there was nothing more in that respect with Mr. Cade because Mr. Cade, as I testified before, said that he could do nothing with me, but he could give me some business.

Examination by Assemblyman Burr:

Q. You and Mr. Wood had some disagreement about fifteen hundred dollars that should have been split between you two? A. We had. That is a matter of record that we had.

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Q. Did you have that disagreement with Wood? A. Yes.

Q. Ever have a talk with him about it? A. Yes, sir.

Q. Did you tell him he should have split with you? A. I told him I was entitled to it.

Q. What did he say? A. He threw up his hands and said, "I have forgot about it."

Q. He forgot all about it? A. Yes, sir.

Q. Did you forget about it? A. I haven't forgotten yet, sir.

Q. You feel pretty sore yet? Now listen, you have come here to-day to tell this Committee as much as you can about Mr. Wood's character and just how far you went with him? A. Yes, sir.

Q. Do you think you have done that? A. Yes, sir.

Q. And you are real sore against Wood? A. I am to a certain extent.

Q. And you have covered him up pretty well to-day? A. No, sir; I have not tried to cover him up. I have not tried to cover up Mr. Wood nohow. Would not get me nothing to cover him up. What would it get me to cover him up?

Q. What do you mean? A. What am I getting for it? What would it get me to cover Mr. Wood up? That is a joke.

Q. Now, you do not seem to have anything else in your mind but money. There are a good many other things in this investigation besides money. Now, I will tell you what would stop you from covering him up. You keep from putting yourself in there. A. I am not putting myself in bad for Mr. Wood or anyone else. Do not worry.

Chairman Lawson.— Assemblyman Burr is not worried.

Mr. Banks.— I am not worried about putting myself in bad. An ounce of prevention is worth a pound of cure, and this is the boy with the ounce of prevention. I am not worrying and I am not trying to cover Mr. Wood up in this hearing. I have absolutely nothing to gain by it. And Mr. Wood knew nothing about my dealings with Mr. Cade, and what I would have got out of Mr. Cade I would have got for myself.

Examination by Mr. Burr:

Q. Do you think if the original bids had stood up Cade would have needed you? A. I think Mr. Cade would have given me

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some business if he got the business. That is what I was looking for more than anything else.

Q. Don't you think Mr. Cade felt he needed somebody when there was a question about those contracts being sent back and new bids asked for — needed somebody to go to Wood? A. He did not ask me to go to Wood. Said to use my influence with Wood and talk Federal signal.

Q. What does that mean? A. The same thing.

Chairman Lawson.— Well, Mr. Banks, did you use your influence with Wood?

Mr. Banks.— I talked as much as I could without getting Mr. Wood suspicious about my actions.

The Chairman.— You think he did?

Mr. Banks.— I think he did.

Q. He did not have to get suspicious because you told Wood there was a little change in it? A. I did not tell him that.

Q. You told him you might get some business out of it? A. I told him I might get some business out of the Federal, and I told Cade I looked for some work on the Center Street loop, but that was all ate up.

Q. What did Wood tell you then? A. He said he had nothing to do with it at all.

Q. As to his vote? A. He did not tell me anything about his vote.

Q. Did he tell you how he was going to vote? A. No, sir; he did not. And I do not think he would tell his best friend. That is the kind of a fellow he is. Even his own mother he wouldn't tell. I know Wood pretty well, and his make-up. He has got awful peculiarities.

Q. What was there peculiar about him? A. Look at the man when he is on the witness stand, and you can find out.

Q. I have met him over in the office and off the witness stand. A. If you got as close to him, and been in his office for five years, you would find out his peculiarities.

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The Chairman.— That is just what we want to know — you have been closer to Mr. Wood than anybody else.

Mr. Banks.— I have not. I have been in contact with him in those five years, and in those five years I cannot tell of the man. I cannot make head or tail out of the man at all. Honestly I can't. My best friends know that, that I cannot make head or tail out of the man. I cannot follow the man; he is too deep for me. Anybody who has known the man can tell you. There are people who have known the man for years in the Bronx — tell you he is the most mysterious character they ever knew.

The Chairman.— Is that what the general opinion is up in the Bronx?

Mr. Banks.— Yes, that is the general opinion. Lots of people he knows in different clubs. I don't think even Judge Tierney understands the man.

The Chairman.— Judge Tierney, you say, was partly responsible for his appointment?

Mr. Banks.— That is what he says. I doubt it very much.

The Chairman.— Tierney will be a Supreme Court justice after the first?

Mr. Banks.— Yes.

The Chairman.— He isn't a man who will vouch for a man he doesn't know?

Mr. Banks.— He knows Judge Brady and Judge Morris and Judge Cohalan — he knows all those people. Bring them down and they will tell you things about him that will probably open your eyes more than I can.

The Chairman.— They did not do any missionary work for him, did they?

Mr. Banks.— Hard to say. Man gets a position as Public Service Commissioner, must have a pretty good sponsor to say something in his behalf.

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The Chairman.— What makes you think that?

Mr. Banks.— Because my thoughts ran that way. No man who isn't known doesn't get a position like that unless he is pretty well known.

The Chairman.— Is there any foundation?

Mr. Banks.— I haven't any foundation to base it on.

The Chairman.— Was there any talk up in the Bronx when he was appointed?

Mr. Banks.— No. Lots of people in the Bronx were surprised when he was made a Public Service Commissioner.

The Chairman.— Didn't think he was a big enough man to be made a Public Service Commissioner?

Mr. Banks.— That is for you to decide.

The Chairman.— The people up in the Bronx must know.

Mr. Banks.— I am only a very small minority of the Bronx.

The Chairman.— Did you hear any talk up there prior to his appointment?

Mr. Banks.— No. I didn't know anything only a few days before his appointment.

The Chairman.— Did you hear any talk subsequent to the appointment?

Mr. Banks.— No, I did not. If I did I would tell you.

The Chairman.— Did you hear any talk of that appointment being peddled around through the Bronx?

Mr. Banks.— I never did. I never heard that. I know that Surrogate Schultz up there was offered the appointment, or was appointed, and he declined.

The Chairman.— Have you heard since that that appointment was peddled around through the Bronx? A. I heard in the papers it was settled and sold for a consideration, but I never heard that from any soul.

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By the Chairman:

Q. Did you ever talk that around in the Bronx? A. No, sir.

Q. Anybody ever say anything to you about it? A. No.

Q. But you say you heard about it? A. What do you mean?

Q. You heard about this appointment being peddled around? A. No, sir, I did not hear about it.

Q. You read about it? A. I read about it in the papers in the last few days where a consideration was offered for this position. I saw it in the papers, and that is all I know about it. I never heard any talk of that kind in the Bronx of any sort, and I meet a lot of people in the Bronx, and a lot of them know Mr. Wood.

Q. Know him any better than you know him? A. I don't know.

Q. You don't think so? A. I don't know who he knows. I don't think his own brother knows him. Put his own brother on the stand and ask him to tell you about Mr. Wood. He is all over the country. He floats around. He flits here and there.

By the Chairman:

Q. He is a floater? A. I don't know as he is a floater. He is a great fellow for moving around. He is on the go all the time.

Q. Where does he live now? A. Well, he did live at the Country Club and I believe he has lived there ever since he has been Public Service Commissioner. Before that I guess, he lived all over. He lived at Dunwoodie Country Club. Spent a night here and a good many nights I suppose no one knows where he was.

Q. That where he was a man of mystery? A. A man with a mask.

Examination by Assemblyman Burr:

Q. Mr. Banks, you don't want this Commission to have the impression from you that Wood is a man of mystery, do you? A. Why, no, I wouldn't want to have that on the record.

Q. Do you know as a matter of fact that he has attended more meetings of the Commission than any other Commissioner? A. I did not know that.

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Q. Very prompt in his attendance? A. Well, that speaks well for him.

Chairman Lawson.— We will take an elastic recess.

AFTER RECESS

Senator Thompson takes the chair.

Mr. Banks on the stand.

Examination by Chairman Thompson:

Q. Now I have not heard this examination. Have you told, Banks, all the talks that you have had with Wood, do you think? A. I have absolutely, yes.

Q. Now don't you think if you were to think the situation over a little bit, that you might think up some of those conversations? A. Why, Senator, the grilling that I have got here this morning and this afternoon as to Mr. Wood and as to his personality and other things and my close affiliations and business with him and being the closest friend he ever had, I think I have developed and told you a whole lot.

Q. Don't you see you have put yourself in an almost impossible position here? Don't you see the natural consequence carried with it you must have had the most confidential talks with Wood? Don't you see you do not spare anybody except you are evidently trying to spare Wood? A. I am not trying to spare Wood.

Q. There is no reason. I do not want you to tell something that is not true? A. I do not want to do it either.

Q. But I do not want you to keep back something that is so? A. I don't propose to keep anything back.

Q. I don't want you to tell anything that is not so as I said, but I think if there is these conversations that you owe it to the State to tell them, that's all, and we do not want to make anything difficult or hard to you? A. Well, you have the last three weeks, Senator.

Q. Because we have had to. A. You have.

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Q. Your memory is much better to-day than it was three weeks ago? A. I guess it has been and I developed my memory a whole lot, too.

Q. I acknowledge that and the usual courtesy. A. I have told a lot of things, Senator, pardon me for interrupting you, that I did not think I would tell.

Q. Now there are more things I think and I hope that between now and to-morrow morning that you will make up your mind that it is best for you to tell us all. A. There is nothing else to tell but what I have told, Senator.

Q. I wish you would think that over over night and I wish in the morning you would come back and tell us, especially these conversations with Mr. Wood and between now and morning I hope you won't converse with Mr. Wood. You go home and talk with Mrs. Banks, that is about as good counsel as you can get. A. I have not talked with Wood any more —

Q. You take my advice and go home and talk it over with Mrs. Banks and that is the proper thing and come back here to-morrow at 11 o'clock. A. I cannot be here at 11 because I am subpoenaed before the grand jury.

Q. Then as soon as the grand jury gets through you come down here. A. I will do my best.

JOHN T. CADE, sworn as a witness, testified as follows:

Direct examination by Chairman Thompson:

Q. Mr. Cade, what is your full name? A. John T. Cade.

Q. Your residence — your address? A. Arcola, New Jersey.

Q. Mr. Cade, in the nature, in the light of the transactions developed before this Committee with other witnesses before you have gone on, it suggests to this Committee in a way that cannot be ignored, the fact that your testimony might have to do with actions or facts or acts of a criminal nature. That being true, it becomes my duty to ask you if you will sign a waiver of immunity? A. No, sir.

Q. You refuse to sign a waiver of immunity? A. I do.

Chairman Thompson.— Then I suggest that Mr. Cade be excused until to-morrow morning. If there is no objection, you will be excused, and I ask you to appear.

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Mr. Cade.— I believe I have to appear before the grand jury. Shall I ask them to be excused?

The Chairman.— No, you take the advice of the District Attorney, and when he gets through with you, you appear here.

(At this time an elastic recess was taken.)

AFTER RECESS

Mr. RENSHAW recalled to the stand.

Examination by Mr. Lewis:

Q. Mr. Renshaw, did you know Mr. Banks at all? A. No, sir.

Q. Did you know what business he was in? A. Not until the last three or four months.

Q. And in the talks that you had with Mr. Cade, did Mr. Cade tell you that Mr. Banks expected to get some business out of the Federal Company in the event that he made this arrangement with Commissioner Wood A. He did not.

Q. Was that ever suggested to you at any time? A. Never.

Q. First you have heard of it here to-day? A. No. I think it was to-day or yesterday some time such a theory was put forward.

Examination by Chairman Thompson:

Q. Then when Mr. Cade told you what you testified to here yesterday, Mr. Renshaw, should I take it, did he mention anything about any business with Banks or Banks' company? A. Nothing of any kind.

Q. The Northeastern or Northwestern Equipment Company or Construction Company? A. Never. I did not even know of the company's existence.

Q. What was the extent of your information as to the transaction between Cade and Banks as to the subject of it? A. That it related merely to the compensation to be paid.

Q. And that you understood to be money? A. I understood it to be money.

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The Chairman.— At the unanimous request of those who desire to buy Christmas presents, we will take a suspension now. I wish to acknowledge a very fine cigarette case from some of the clerks and secretaries of this Committee which I received a few moments ago. We will suspend now until to-morrow at 11 o'clock, at the same place. The witnesses are hereby directed to appear at 11 o'clock to-morrow, except those subpoenaed before the grand jury. In those cases they are directed to appear as soon as the District Attorney excuses them.

Whereupon, an adjournment was taken to December 22, 1915, at 11 A. M., at the same place.

DECEMBER 22, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Committee called to order at 11 A. M., pursuant to adjournment.

A quorum of the Committee present.

An elastic recess was taken until 2 P. M.

AFTER RECESS

The Committee met, with Senator Thompson acting as Chairman.

The Chairman.— The Committee will come to order. The Committee has notified Mr. Public Service Commissioner Wood to come before the Committee, and am advised that he will be here in about twenty minutes. I assume everybody realizes the Committee will have to adjourn over Christmas, and we will not, under any circumstances, stop the investigation on the adjourned day, but will continue on the lines in which we are, until we exhaust the subject, and the signal matters that are up, I will state

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in justice to all parties, they will all be given a chance to be heard before this investigation is done, and that we will pursue until the investigation is finished. It might not be fair to the representatives of the signal company. If they want to be heard, they will be heard, and some of them will be heard whether they want to or not, but we will continue the investigation on that subject. We will excuse now Mr. Salmon, Mr. Finucane and Mr. Sidney J. Johnson until next Tuesday at 11 o'clock A. M. I make this excuse now because I understand it will be convenient for you to get the 4 o'clock train.

Mr. Salmon.— May I say, Mr. Chairman, we have two of our other people who have come down to testify. May they come on Tuesday, will it be proper for them to come?

Chairman Thompson.— It is proper for them to come, but I cannot guarantee they will be heard on Tuesday, but we will adjourn until Tuesday. We reserve the right, which at least every woman has, of changing her mind. Those other gentlemen may be excused until next Tuesday as well. We will take an elastic recess for a few minutes.

AFTER RECESS

Chairman Thompson.— The Committee will come to order.

ROBERT COLGATE WOOD on the stand.

Examination by the Chairman:

Q. Commissioner, the Committee have sent for you at the request of Senator Lawson and Assemblyman Burr, Brooklyn members of the Committee. We understand or they do and so do the Committee, that the Public Service Commission have under consideration over there, very important matters affecting the city of Brooklyn. You must know from the public prints of the city of New York that before this Committee very serious charges have been made against you. On behalf of the Brooklyn members of our Committee, this Committee desires to ask of you whether or

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not you have considered the impropriety of sitting in these matters until these charges made before this Committee have been cleared up? A. Now, in view of the fact that the grand jury proceedings, I see in the newspapers, have been started against me. I decline to answer the question.

Q. Decline to answer any questions? A. Yes.

Examination by Senator Lawson:

Q. Well, Mr. Commissioner, have you considered the fairness to the people of Brooklyn in continuing to sit with the Commission relative to this third-tracking matter that is up before your Commission now and has been for the last two or three days? Have you considered the fairness of what your judgment might be and how it might be considered by the Brooklyn people in the light of what you have read as to the testimony that has been brought out before this Committee? A. Senator, I hardly think those are fair questions. I refuse to answer those on the ground that I previously made the last time I was over here. I do not think, they are either personal, or pertinent, and I do not think they are fair questions.

Examination by Chairman Thompson:

Q. You need not look for the paper, Commissioner — we know what is in it.

Chairman Thompson.— You may be excused.

Assemblyman Callahan.— Mr. Chairman, I understand that the witness has been asked why he continued to sit.

The Chairman.— No. He was asked if he considered the impropriety of sitting.

Mr. Callahan.— I do not think it is fair to even ask the witness that question, in view of the fact that no charges have been submitted to the Governor, as far as I know. It looks as if this Committee is pre-judging his case. I want to say that I dissent from the attitude of the Committee in questioning the witness on that phase of the situation.

Senator Lawson.— Well, Mr. Chairman, I insist on putting on the record in the presence of the Commissioner, that as a Brooklyn member of this Committee, as a member of the State Senate of

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the State of New York, that it is my judgment that where a matter of such vital public importance as the third tracking of the Kings county elevated, which is now being thrashed out before the Public Service Commission, should be carefully considered by Commissioner Wood, as to whether he should sit and judge of the protest made while the charges and the testimony are pending before this Committee. That is my statement, and I want it for the record.

Mr. Callahan.— On the record, here, I should say it seems to me no charges have been made and no determination made of the truth or falsity of the statements made here, and if this Committee feel that charges should have been filed, I think it has had the opportunity to do so, and at that time this question might have been asked the witness.

Senator Lawson.— It would be too late to object to it then.

Assemblyman Callahan.— I simply want to have my statement on the record.

Chairman Thompson.— Anybody else got an attitude? In view of the fact that matters are just as they are, and it is about Christmas, and we have all got to do Christmas shopping, and the fact that we cannot work all the while, although we have been ready to do so.

By Senator Foley:

Q. Is it the intention of the Committee to meet and file charges against the Commissioner or to consider that question?

Chairman Thompson.— The Committee is in an investigation of a very serious nature, and the investigation must proceed to its final conclusion, and on the face of the facts appearing before this Committee the Public Service Commissioner who just left the room is absolutely unfit to sit. We have been here five days and he has not taken the opportunity to come before this Committee to make a statement. He has been here now and he has gone without embracing that opportunity.

Senator Foley.— There are only two alternatives—if the Commissioner is guilty then charges ought to be filed against him, and

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if he is innocent, he ought to have a chance to explain them to the Governor. I think we owe it to the Committee to file those charges against him in the same way as against the late Chairman.

Chairman Thompson.— I might remind the gentleman if he was anxious to have those charges filed against this man, every citizen of the State of New York has the right to file charges.

Senator Foley.— This Committee is leading that way.

Chairman Thompson.—I have pointed the way. This Committee is in an investigation.

Senator Foley.— We won't interfere with the investigation.

Chairman Thompson.— I assure you the investigation won't cease until we have investigated to the bottom of it.

Senator Foley.— I will vote not to file the charges.

Assemblyman Callahan.— I will vote in the same way.

Chairman Thompson.— The question is not up and your votes will not be recorded.

Senator Foley.— And in doing that I will not question the right or the attitude of the Committee to investigate further. I do think that if the Commissioner is in any way guilty of the charges made by the witnesses here before us, that those charges ought to be disposed of now. This is the first suggestion to be made of any wrongdoing against the Commission, and any corruption, and it ought to be disposed of.

Chairman Thompson.— I think it should have been disposed of by the Senate Committee on Finance of 1914, at the time he was appointed.

Senator Foley.— Then it is not the intention to dispose of that before Christmas? Am I entitled to an answer?

Chairman Thompson.— As soon as those matters come before the Committee, they are generally submitted without a case of public quizzing in reference to it. I will simply say in answer to that, as I said before, that the investigation will continue for the

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benefit of those who want it, and for the benefit of those who do not, until it is exhausted.

There being nothing further, this Committee will adjourn until Tuesday, December 28, 1915, at 11 A. M., at this place. The witnesses are instructed to appear next Tuesday, at 11 A. M.

Whereupon, the Committee adjourned to December 28, 1915, at 11 A. M.

DECEMBER 28, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Committee met at 11 o'clock A. M., pursuant to adjournment.

A quorum present.

Senator Towner acting as Chairman.

The Chairman.— The Committee will come to order, and we will take a recess until two o'clock, and all witnesses under subpoena are expected to report here at two o'clock.

Whereupon, the Committee adjourned to meet at 2 P. M.

AFTER RECESS

A quorum present.

Senator Thompson acting as Chairman.

The Chairman.— You can put this statement on the record, in reference to Commissioner Williams' resignation, and I want to say that is a statement made from the record of the Commission up to date. It does not reflect the personal sentiment of any member of the Committee. It is simply a statement that is due from our records up to this date. If you want the personal ideas of the members of the Committee, why, you can consult them and get them. It is a statement made by the Chairman of the Committee

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which the Chairman thinks the records of the Committee up to date justify.

The statement referred to is as follows:

While I think it my duty to state that our investigations have developed nothing detrimental to the personal character of Mr. Williams, yet I believe his attitude as a Public Service Commissioner, and his personal view as to the manner of administration of the Public Service Law was wrong, and that his resignation has been a service to the State. I personally believe that his services would be of great value as an advocate in behalf of any public utility corporation.

The handling of the rate case of the Kings County Lighting Company, which was allowed to remain pending before the Commission and the courts for more than five years, was not adequately tried on behalf of the consumers by the attorneys for the Public Service Commission, and although the company itself offered to reduce its rates so that they would have now been eighty cents, the same as other companies charge in the city of Brooklyn, Commissioner Williams had written his opinion and distributed the same among the other commissioners advocating the rate which the company now charge, to wit, ninety-five cents.

The action of the Commissioner in this case and other cases of like nature, while he might have reached his conclusions from his point of view, yet put him in a position entirely disregarding the public sentiment and interest of the community and what our Committee regard as the plain intent and meaning of the Public Service Commissions Law.

It was the intention of our Committee to prefer charges against Commissioner Williams, based on his action in the Kings County Lighting case, and other cases of like nature, which we had in contemplation for the very purpose of assuring a more satisfactory administration of the law in New York upon original principles, but in view of the resignation, our Committee will not feel called upon now, to make any charges, nor to investigate further with particular reference to Commissioner Williams, but will probably call the attention of the new Commission to matters which have come to our knowledge in this connection and those found in our former charges.

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The Chairman.— Now, this Committee has not concluded its investigations, and are not continuing the investigations solely with reference to Commissioner Wood. We will continue the investigation along the lines which are before us and not limit it in any way. We will probably investigate the engineering department and the legal department and the secretary's department of the Public Service Commission, but while we are doing that, we have to keep in mind that before long we will have to present to the Legislature something in the way of a recommendation by way of amendment to the Public Service Law, if in our judgment the same becomes necessary. And we will have to take up that part of our report very shortly, and we do not want to foreclose anybody's idea in reference to the amendments to the law, and if there is anyone who has conceptions of which they think would be of value to this Committee in considering and drawing amendments to the law, we will be glad to hear them at any time, and will take up those matters. I am receiving a great deal of mail in reference to water companies. It seems to be unanimous that water companies should be brought under the jurisdiction of the Public Service Commission. If there is any other subject which anyone is to draw to our attention, we would like to hear it now, because it won't be very long before our report will be in shape where it will be difficult to amend it. Mr. Johnson, Mr. Banks and Mr. Cade have been excused until tomorrow morning at 11 o'clock.

At this time an elastic recess was taken.

AFTER RECESS

Senator Towner acting as Chairman.

The Chairman.— The Committee will come to order. The Committee will take an adjournment until to-morrow at 11 o'clock, and all witnesses under subpoena are directed to appear at that time.

Whereupon, the Committee adjourned to meet at the same place at 11 A. M., December 29th, 1915.

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DECEMBER 29, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order pursuant to adjournment, at 11 o'clock A. M., Chairman Thompson presiding.

Chairman Thompson.— A subpoena has been issued for Mr. Arthur J. Baldwin. Our process-server reports Mr. Baldwin is out of town, whereupon the process-server has been sent back to subpoena the office boy, and we will wait a few minutes to see what the result may be.

Mr. William S. Menden was called as a witness, and prior to being sworn, signed a waiver of immunity, which waiver is made a part of the record and is as follows:

> "I, William S. Menden, residing in the city of New York, presenting myself as a witness before the Joint Committee of the Senate and Assembly of the State of New York, duly appointed for the purpose of conducting an investigation of the administration of the Public Service Commissions Law, hereby specifically waive any and all immunity from indictment and prosecution, to which I may be entitled by reason of any provision of any law of the State of New York on account of any testimony that I may now or hereafter give in relation to the subject matter of such investigation or otherwise, and consent that the testimony so given by me may be used independent of and free from any and all claims to immunity to which I might otherwise in any event be entitled.
>
> "(Signed) W. S. MENDEN.
>
> Dated this 29th day of December, 1915.
>
> "Witness, J. Frank Smith."

WILLIAM S. MENDEN, being first duly sworn, testified as follows:

Examined by Mr. Smith:

Q. Where do you reside? A. Brooklyn.

Q. What is your business? A. Chief engineer of the New York Municipal Railway Corporation.

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Q. How long have you occupied that position? A. Since April, 1913.

Q. What position did you occupy prior to that? A. I was assistant general manager and chief engineer of the other B. R. T. companies.

Q. How long were you in that position? A. I think six or seven years.

Q. Have you had prior railroad experience to that? A. Yes, sir.

Q. Where? A. In Chicago.

Q. How long? A. Since — my entire railroad experience covers a period from 1891 to the present time.

Q. And all in electrical operation? A. Rapid transit electrical operation.

Q. With what concern were you in Chicago? A. The Metropolitan West Side Elevated Railroad.

Q. Who did you replace as chief engineer in the Brooklyn Rapid Transit? A. E. Clapp was chief engineer prior to the time I came there.

Q. The Brooklyn Rapid Transit Company had occasion, in regard to the Center Street Loop and the Fourth avenue line, to discuss the question of the installation of signalling, electrical signalling devices, did they not? A. Yes, sir.

Q. And you had charge of that matter as chief engineer for the Brooklyn Rapid Transit? A. Had charge of the engineering matters.

Q. Did you have charge of that matter, of the installation of the electrical signal device in connection with the Center street, or in connection with the Center Street Loop and Fourth avenue? A. Yes, sir.

Q. And you had occasion to investigate the various signalling devices? A. Yes, sir.

Q. And what prior experience had you in connection with electric signalling? A. To the extent that such signalling was used on the elevated lines in Chicago, and similar installation on the Brooklyn Rapid Transit system prior to that time.

Q. And as a result of your investigations, did you have occasion

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to make a report of any kind to your company? A. I don't remember of any specific reports. There are different statements in reference to various propositions made from time to time.

Q. But you never made a complete report? A. No, sir.

Q. Did you have any occasion to make a report to the Public Service Commission in connection with the Fourth avenue matter? A. I don't remember of any report to them.

Q. You know of no written report you made to either in either instance? A. There may have been letters written to the chief engineer of the Public Service Commission, and letters written to the president of our company, but I don't remember of anything in the nature of a specific report.

Chairman Thompson.— Let me understand the connection of the Brooklyn Rapid Transit Company with the New York Municipal Railway Company; what is the connection?

Mr. Menden.— The New York Municipal Railway Corporation is one of the constituent companies of the Brooklyn Rapid Transit system.

Chairman Thompson.— Does the Brooklyn Rapid Transit Company have an engineer occupying the same position that you occupy with the New York Municipal Railways?

Mr. Menden.— The B. R. T. does not construct or operate any railroads. The system consists of several different companies, each of which operates —

By Mr. Smith:

Q. So that your position as engineer of the New York Municipal Railways has been how long? A. Since April, 1913.

Q. And in investigating the signal system for this installation in Fourth avenue, what system did you particularly investigate yourself? A. We approached the installation for the making of a contract for the signal system in Fourth avenue subway by different other contracts, prior to that time. The first — I could give you the history of the thing. The first contract we let was for temporary signalling in the Center street loop, which was let by specifying the same system that the Interborough did have installed at that time, and I think we invited two or more companies to bid

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on that, and it was let to the lowest bidder. That was the temporary installation on that loop, and afterwards prepared plans and specifications for the installation of signalling on Center street loop, which involved removing the temporary signals.

Q. Who made the temporary installation? A. The General Railway Signal Company made the temporary installation, and the next contract was let to the Federal Signal Company, which company removed a great portion of the temporary signalling.

Q. The temporary installation required and received the approval of the Public Service Commission? A. Yes, sir. In order to avoid having too many different kinds of systems of signalling on a system as a whole, we just prepared plans and specifications for signalling of the entire system excepting, I think, one line, the 14th street line is not in that, because the completion will be so many years from now, we did not include that, but we prepared plans and specifications for a complete signal system, based on standard practice, and in those specifications we also included that we wanted to attach to the signal system a form of speed control similar to one we were trying out for our own and developing on the Williamsburg bridge grade. After the bids were received for these signal systems, or at the time the bids were received, the General Company offered an alternative proposition based on a modified speed control different from what we had been trying.

Q. And different from what was included in the plans and specifications? A. Yes, sir.

Q. And so the installation of the Fourth avenue line goes back to the discussion of temporary and permanent installation on the Center Street Loop? A. Yes, sir.

Q. And in the investigation of the different signal systems preparatory to installation, did you do any actual searching out and seeking the best possible conditions? A. We let the signal company submit the different things that they had to submit.

Chairman Thompson.— Which signal company?

Mr. Menden.— Any.

Chairman Thompson.— Which one did you ask?

Mr. Menden.— The General, Federal and Union, and also the Hall Signal, but they had nothing to offer.

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Q. In what form was that request made? A. I think first verbally and later confirmed in writing.

Q. Who carried the verbal request? A. I did.

Q. To each of the signal companies? A. Yes, sir.

Q. Will you tell which one you first took the message to? A The first after the oral came at the time bids were opened —

Q. Prior to the time of the opening of the bids? A. We did not take it up with any of them.

Q. You had taken it up with none of them up to that time? A. No, sir.

Q. The first thing that was done was the request for bids? A. Based on plans and specifications.

Q. On this temporary installation? A. I am speaking of the last.

Q. I am going back to the origin of the signal systems with you — the first thing you did was submit requests to various companies verbally? A. No, sir, in writing; the requests for bids.

Q. No, the request for plans or sketches or anything; what did you do first? A. I took up along with the signal companies, prior to the time we received bids for the complete system of Fourth avenue.

Q. What did you do verbally prior to the time of receiving bids for Fourth avenue system? A. I don't remember anything specifically.

Q. You said you verbally communicated with the several companies? A. After we received bids for the complete system, that was.

Q. Prior to receiving bids for the complete system, you must have done something in the line of investigation or inquiry on the subject of signalling and various systems that might or could be used? A. Nothing except experiment with the speed control devices we had ourselves.

Q. I am speaking about the investigation you made in regard to the modern latest signalling system? A. We specified substantially what the Interborough were using and did not investigate anything other than that.

Chairman Thompson.— In that did you come in contact with the Interborough engineer occupying a similar position to you?

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Mr. Menden.— I had some talk with him.

Chairman Thompson.— What is his name?

Mr. Menden.— Waldron.

Chairman Thompson.— G. W. Waldron?

Mr. Menden.— I don't know his initials.

Q. You are speaking of the Fourth avenue plans and specifications in saying you submitted plans and specifications, you are speaking of the Fourth avenue proposition, are you not? A. Do you mean our requests of the manufacturers for plans and specifications for something different?

Q. Yes. A. I refer to the time after we received the bids and relating to the signalling system specified for Fourth avenue and the other line.

Q. Before this Fourth avenue proposition came up for real discussion, you had gone through the process of an experimental system on the Center street loop and had — A. Not an experimental system, no.

Q. A temporary system? A. It was temporary in the sense of spacing in signals.

Q. That was a temporary system, you had gone through that process? A. It was not temporary in the sense of the apparatus used.

Q. I am not speaking of how or why it was temporary, but it was a temporary system in regard to the Center Street Loop? A. Yes, sir.

Q. And you have gone through the process of a permanent system on Center Street Loop, which was the basis of the discussion on the Fourth avenue proposition? A. No, sir, that wouldn't have anything to do with the Fourth avenue proposition.

Q. Well, it was preliminary to the Fourth avenue? A. No, it was a separate installation, prior to the Fourth avenue bids.

Q. So far as investigation and inquiry, it was preliminary to the Fourth avenue installation? A. Yes, sir.

Q. And the experience you acquired and the investigations you made on the Center Street Loop proposition were available to you

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and used on the Fourth avenue plans and specifications which you prepared? A. I don't think that had any bearing on the preparation of plans and specifications on the Fourth avenue.

Q. It at least acquainted you with the conditions and personnel of the officers of the companies and you met them in connection with the Center Street loop? A. Yes, sir.

Q. Going back to your Center Street Loop proposition, what I call the temporary installation, we get to a point where you said the first intimation you made to the companies was a verbal intimation which you carried? A. I think it started by after the bids were open —

Q. I am not talking about bids; go back to the Center Street Loop proposition? A. Nothing about any special system.

Q. You have already said that the first intimation made to the signal companies with regard to either of these propositions was a verbal communication which you carried and subsequently by letter; I am way back to the Center Street Loop proposition; which company did you first seek and deliver a verbal message to? A. The first company I saw I did not deliver that message to them. They delivered it to me, and that was the General Company.

Q. What officer of the General Company first approached you on the signal proposition? A. Their president and chief engineer, Mr. Salmon and Mr. Howe.

Q. How long before the temporary installation on the Center Street Loop was that? A. It was after the bids were open.

Q. It couldn't be after the bids were opened, because you had to have some discussion to find out what you wanted? A. Probably I misunderstood your question.

Q. Was the first thing you knew about the signal proposition when the bids were opened? A. Which signal proposition?

Q. Either, Center Street Loop or Fourth avenue; you don't mean to say the first thing you knew about it was when the bids were opened? A. The Center Street Loop temporary or permanent system there was nothing to that after the bids were opened or before.

Q. You don't mean to say that the first thing you knew about the signalling system on either the Center Street Loop or Fourth avenue lines was the opening of bids, do you? A. No, sir. I prepared the plans and specifications.

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Q. For the temporary construction on the Center Street Loop? A. Yes, sir.

Q. You did? A. Yes, sir.

Q. Prior to preparing those plans and specifications for the temporary construction on the Center Street Loop, what had you done in investigating the signal proposition? A. Nothing except —

Q. Had you seen the officers of any of the signal companies? A. Not that I know of.

Q. Had you delivered any message to the officers or officer of the companies or any of them? A. None that I remember of.

Q. Had you written any letters or sent any telegrams or had any telephone communication with any officer or employee of any of the signalling companies prior to that time? A. Nothing specific enough for me to recollect at the present time.

Q. So that based on your prior experience and without communicating with any of the signalling companies you prepared plans and specifications for a temporary construction on the Center Street Loop? A. Yes, sir.

Q. What did you do with those plans and specifications? A. They were submitted in the usual way to the signalling companies.

Q. What is the usual way? A. Chief engineer transmits them with a letter.

Q. Did the chief engineer in this instance transmit them with a letter? A. I think so.

Q. And you were the person who made that transmission? A. Yes, sir.

Q. Where did you send them? A. I don't know; to the officers of the signalling companies.

Q. How many signalling companies? A. I don't know the number delivered. There were two, and I am not sure whether the Federal and Hall Company were asked to bid for the temporary or not. The Union and General were.

Chairman Thompson.— How did the Federal Company get in on the temporary construction?

Mr. Menden.— I don't know whether they were asked to bid on the temporary or not.

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Chairman Thompson.— They made the low bid.

Mr. Menden.— No, sir.

Q. What prior acquaintance had you with the General and Union Signal Company? A. I had none with the General, but I did with the Union.

Q. What? A. They had installed for me as chief engineer a number of plants in Chicago and Brooklyn.

Q. What officers were you acquainted with? A. I knew Mr. Johnson and Mr. Prout, and some other engineers, I don't remember their names.

Q. How long had you known Mr. Prout? A. I think ten or fifteen years.

Q. Where did you first become acquainted with him? A. Chicago.

Q. As the result of some installation he was making there? A. Yes, sir.

Q. Under your charge at the time? A. Yes, sir.

Q. How long had you known Mr. Johnson? A. I think possibly ten years.

Q. Where did you first become acquainted with him? A. I am not sure whether here or in Chicago.

Q. How did that acquaintance come about? A. In connection with signal installations for a company I was acting for as chief engineer.

Q. What company was that at that time? A. There are only two companies, The Metropolitan Westside Elevated of Chicago and the companies of the Brooklyn Rapid Transit system.

Q. And you were with the Brooklyn Rapid Transit system at the time you became acquainted with Johnson? A. I think so. I don't think I knew him in Chicago.

Q. How did it come you added the General Railway Signal Company to your list being acquainted only with the Union? A. The desire to get competition, and those were the only two companies that had installed similar apparatus before.

Q. How did that come to your knowledge A. I knew them through Mr. Davy, our consulting engineer, and they had installed signals on the Hudson and Manhattan.

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Q. They were the only two companies that had operated within the New York district, to your knowledge? A. They were the only two companies at that time installed the system such as used on the line.

Q. As the result of that they submitted bids on the Center street loop? A. Yes, sir.

Q. And the installation was made by the General? A. Yes, sir.

Q. Subsequently permanent plans and specifications were prepared? A. Yes, sir.

Q. By and under your direction? A. Yes, sir.

Q. And pending the preparation or final completion of those plans, had you developed your acquaintance with signal companies to any extent? A. The Federal Company had taken up with me through some of their representatives the question —

Q. Who? A. Mr. Cade, I think.

Q. Through Mr. Cade? A. Yes, sir.

Q. Had taken up what question? A. The question of bidding on the complete signalling, and from time to time asked us as to how we were getting along with the plans and specifications.

Q. Where did you first see Mr. Cade? A. He came to my office, either introduced by someone or without an introduction; I am not sure which.

Q. Did you always meet him at your office? A. I don't know of having met him any other place.

Q. You have no recollection of meeting him at any other place? A. I have met him at the Public Service Commission office.

Q. You may have met him there? A. Yes, sir.

Q. Any other place? A. Not that I remember.

Q. Is that all the addition that you made to your acquaintance with signal companies, is the Federal, through Mr. Cade? A. I think the Hall Company in the meantime had gotten the contract from us for a small interlocking plant at Broadway and Myrtle avenue, and they asked to be permitted to bid on the larger installation.

Q. What member of the company? A. Mr. Peddle, I think, their chief engineer.

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Q. Did you meet anybody else but Mr. Peddle? A. Mr. Hall.

Q. How many times did you meet him? A. I think he has been in my office three or four times.

Q. Did you meet him anywhere else? A. No, sir.

Q. By the time your company had the permanent installation on the Center Street Loop you had the acquaintance of the Hall, Federal, General and Union? A. Yes, sir.

Q. Any other company? A. No, sir.

Q. Did all of these companies receive from you in the usual course a set of the plans and specifications with the letter requesting bids on the permanent Center Street Loop construction? A. I am not sure whether the Hall Company got those plans for the Center Street Loop or not. They did for Fourth avenue, and all the other companies did.

Q. Do you know of any reason why the Hall did not? A. The Hall Company is a comparatively small company and had never done automatic block signal work, and I am not sure whether they were considered at the time we let the Center Street Loop permanent contract.

Q. The Center Street Loop is a comparatively small job? A. $200,000 job. It is a large signal contract.

Q. And was that what operated in your mind to neglect or refuse to send them, if you did neglect or refuse to send them, a copy of the plans and specifications? A. It was altogether a neglect or oversight, because we could have no objection to sending them a copy of the plans and specifications. I don't think at that time we considered them seriously in their connection with automatic block signal works, but they did ask later on, and we may have sent that to them. I am not sure.

Q. As a result of the submission to the three companies, the Federal, of which Mr. Cade was the representative, was the successful bidder? A. Yes, sir.

Q. And you submitted those bids to the Public Service Commission? A. Yes, sir.

Q. Did you make any written report in connection with them? A. No, sir.

Q. And the Federal received the contract and installed? A. Yes, sir.

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Q. As a result of the installation of the permanent Center Street Loop signalling system, you, not entirely as a result, but subsequently, you prepared plans and specifications for the Fourth avenue? A. Yes, sir.

Q. And was that the first time you had included in plans and specifications the proposition of a speed control device? A. Yes, sir.

Q. Is a speed control device necessary or desirable on the Center Street Loop proposition? A. It is desirable.

Q. And how long prior to the installation or to the preparation of the plans and specifications on the Fourth avenue, had you prepared plans and specifications on the Center Street Loop? A. I think about a year.

Q. And at the time of the preparation of the Center Street Loop plans and specifications, was the speed control device a matter of experiment by you and your company? A. The speed control device, the matter of speed control was taken up by us at the time that the Public Service Commission asked for special protection for operation of trains down the grade of the Williamsburg bridge into the Center Street Loop. It came up at that time. The Public Service Commission engineers felt it was necessary on the heavy grade going down to have the trains under better control, and that started us in the developing of a speed control device, which would automatically control the speed of the train going down the grade.

Q. How long was that prior to the preparation of the Center Street Loop plans and specifications? A. It came up at that time that we submitted the plans and specifications for the temporary system to the Public Service Commission.

Q. So it was in your mind, and its desirability was apparent at the time of the submission of the permanent plans and specifications? A. Yes, sir.

Q. Why wasn't it included in the Center Street Loop proposition? A. At that time we knew of no successful speed control device in operation. We had just begun to experiment with a device and were not sufficiently familiar with the requirements to put them into the plans and specifications.

Q. When you got to the Fourth avenue proposition, how definitely did you specify your speed control requirements? A. We

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merely specified that the contractor should so arrange his signal apparatus furnished by him that we could attach to that system a speed control apparatus which we contemplated on the new cars.

Q. That was a speed control device of your own experimentation at that time? A. Yes, sir.

Q. So the plans and specifications were prepared and the installation would be so made under those plans and specifications that at any subsequent time a proper speed control device of that general character could be attached? A. Yes, sir.

Q. To what companies did you submit the Fourth avenue plans and specifications when complete? A. The four companies; the Hall Signal Company, the Federal, the Union Switch & Signal, and to the General Railway Signal Company.

Q. Between the complete Center Street Loop proposition and the submission of plans and specifications for the Fourth avenue, what communications did you have, or what conversations did you have with the officers of any of those four companies? A. I remember of no specific communication or conversation. There were discussions with the representatives of all the companies during that time, discussing different features of it, as is usual in connection with work of that kind.

Q. Did you meet them at your office? A. Yes, sir.

Q. Always at your office? A. I know of no exception to that.

Q. Did you go to the works of any of the companies? A. I did not, but our signal engineer did.

Q. What is his name? A. R. C. Johnson.

Q. To the works of what companies did he go? A. He went to the works of all the companies, except the Hall. I don't know whether he went there or not.

Chairman Thompson.— What is Mr. R. C. Johnson's position with your company?

Mr. Menden.— Signal engineer.

Chairman Thompson.— He was under you?

Mr. Menden.— Yes, sir.

Chairman Thompson.— Have you a superintendent of telephones?

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Mr. Menden.— We have a telephone engineer.

Chairman Thompson.— What is his name?

Mr. Menden.— E. E. Trafton.

Chairman Thompson.— What is his address?

Mr. Menden.— I don't know. I think he lives in Brooklyn.

Chairman Thompson.— Have you a purchasing agent?

Mr. Menden.— Yes, sir.

Chairman Thompson.— What is his name?

Mr. Menden.— Van Cott.

Chairman Thompson.— What is his first name?

Mr. Menden.— L. C. Van Cott.

Chairman Thompson.— And your signal engineer is R. C. Johnson?

Mr. Menden.— Yes, sir.

Chairman Thompson.— Who is W. C. Williams?

Mr. Menden.— He is assistant to Johnson.

Chairman Thompson.— Who is Mr. Hudson?

Mr. Menden.— He is an inspector.

Chairman Thompson.— Inspector of what?

Mr. Menden.— Signal inspector.

Chairman Thompson.— That is, he is under Mr. Johnson?

Mr. Menden.— Yes, sir.

Chairman Thompson.— Who is Mr. Baldwin?

Mr. Menden.—May be an inspector.

Chairman Thompson.— What is Mr. Hudson's first name?

Mr. Menden.— I don't know that.

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Chairman Thompson.— Have you a general inspector and district inspector?

Mr. Menden.— I don't remember them as such a designation.

Chairman Thompson.— That might mean Mr. Hudson and Mr. Baldwin?

Mr. Menden.— It might.

Chairman Thompson.— Who is Mr. George Holzman?

Mr. Menden.— I don't recall that name.

Chairman Thompson.— It says, "George Holzman, B. R. T. freight;" would that be in the freight department?

Mr. Menden.— That would be under the South Brooklyn Railroad. I don't recall his name.

Chairman Thompson.— Do you know the assistant engineer of the Interborough Rapid Transit?

Mr. Menden.— There are a good many.

Chairman Thompson.— Do you know the signal superintendent?

Mr. Menden.— The signal engineer, Waldron; I think that is his title. He has charge of signals.

Chairman Thompson.— Who is their purchasing agent, Mr. Ross?

Mr. Menden.— He is vice-president in charge of purchases, I think.

Chairman Thompson.— And they have a superintendent of telephones, do they?

Mr. Menden.— They have some one looks after the telephones, but I don't know his name.

Chairman Thompson.— We will have to suspend now until 2 o'clock. I want to put on the record a portion of a report of Perley Morse & Co., from the books of the General Railway Signal Company at Rochester, an item of December 24, 1914, marked

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"Check No. A28562," drawn to the order of Edwards, Sager and Wooster, drawn on the Hanover National Bank of New York, signed by W. W. Salmon, President, amount ten thousand dollars, endorsed "Pay to the order of Arthur J. Baldwin," signed Edwards, Sager & Wooster, further endorsed "Pay to Essex County Trust Company for deposit," signed "Arthur J. Baldwin, A. J. Baldwin." Check was deposited in Essex County Trust Company, New Jersey, on December 30, 1914. The amount of this voucher is debited on the books of the General Railway Signal Company to speed control.

The Committee has issued a subpoena for Mr. Arthur J. Baldwin, to explain this item, and we were first advised that Mr. Baldwin was not in town, and no other information. Mr. Leonard Baldwin, another member of the firm, was called and informs us Mr. Arthur Baldwin is in Albany on business for the firm, which is no doubt true, and will return this afternoon, and appear before the Committee this afternoon or to-morrow morning. We will suspend now until 2 o'clock, and witnesses are directed to appear at that time.

Whereupon, at 1:20 o'clock P. M., a recess was taken to 2 o'clock P. M.

AFTERNOON SESSION

Chairman Thompson.— The Committee will please come to order. I agreed at this morning's session of the Niagara Power Investigating Committee, with two representatives of the National Consumers' League, who appeared, and the subject they wanted to present did not seem to be within the scope of the investigation of that Committee, if there is no objection, to hear the ladies before this Committee, and we will listen to them now.

(The ladies mentioned are Mrs. Florence Kelly, representing the National Consumers' League, 289 Fourth avenue, New York city, and Mrs. Pauline Goldmark, representing the same body.)

Chairman Thompson.— You may proceed with anything you have to present to this Committee.

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Mrs. Kelly.— We appear as inquirers. The National Consumers' League has established secretaries for the purpose of learning what we can of the wages that are paid by the franchised corporations subject to study by the Public Service Commissions, and we were led to do this by our experience with the Foley Investigating Committee last year, and the ruling of the Public Service Commission in the matter of the New York Telephone Company. The New York Telephone Company's rates were cut with no inquiry whatever into the wages of the twelve thousand women employees, and we were led in discovering that, and in order that a similar thing might not happen again without public knowledge of it, the Consumers' League has undertaken an inquiry into the wages and conditions of work of the employees of these corporations, and the effect of the rulings of the committees of inquiry and the Public Service Commissions.

Another thing which led us to do this, we were led to make this continuous inquiry by the action last year of the Foley Committee followed by the action of the State Commission in regard to the rates of the New York Telephone Company. Those rates were very materially cut, and the question was never raised at any stage of the inquiry until the closing hearing when we raised it, as to the wages paid the twelve thousand women employees, the telephone operators, and in order that nothing like that should happen again with the public perfectly ignorant of it, this secretaryship was created inside the Consumers' League.

Chairman Thompson.— Did that cut in service reduce the wages?

Mrs. Kelly.— Nobody knows. Certainly since the cut is to last for a considerable time, it will make it impossible to get any increase.

Chairman Thompson.— That gives the New York Telephone Company an excuse to not raise wages because they will say the wage scale that was in force at the time the new rate was fixed would be compelling upon them?

Mrs. Kelly.— Yes, sir, irrespective of any future increase.

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Chairman Thompson.— It is my opinion the New York Telephone Company, notwithstanding the cut they had, may profit enough so they may afford to increase wages quite materially yet.

Mrs. Kelly.— We don't know anything about it, and we think there should be no change made in rates without the employees being given an opportunity to be heard.

Chairman Thompson.— Do the companies, after they get a rate fixed, use that for an excuse for refusing an increase in wages?

Mrs. Kelly.— We are inquirers. We don't know what they do. In this case, where the rate was fixed on the basis of the then existing wages, it will be difficult to get a raise in wages.

Chairman Thompson.— Have you had any information from some public service company?

Mrs. Kelly.— On what basis could we ask them to increase wages?

Chairman Thompson.— On the basis of their making enough to justify it.

Mrs. Kelly.— We would have to show that.

Chairman Thompson.— Do the companies use that as an excuse and give it out to your folks that you are interested in?

Mrs. Kelly.— If you will look up the record of Mr. Lincoln's evidence before the National Interstate Commerce Commission, you will find the decrease of rates has caused another thing which led us to start the inquiry, and that is the fact the city has been shown to have the subways built by men who work for $1.35 a day and $1.50 a day through contractors, and no steps having been taken by the Commission, to ascertain what is the prevailing rate of wages. Either $1.35 a day or $1.50 a day is not a living wage in New York to-day for the head of a family, and the Italians and Bohemians who do the work under ground are men in the best years of their lives and they have been shown to be getting $1.35 and $1.50 a day, and within six months past. There

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is no way of learning which is the prevailing rate of wages for those men who do that work for the city through the contractors. You will find it all appears published in the *Survey* of the 16th of October.

Chairman Thompson.— How much do they pay the women who work in the offices twelve hours a day?

Mrs. Kelly.— I don't know any women who work in offices twelve hours a day.

Chairman Thompson.— I mean in the ticket offices?

Mrs. Kelly.— We have no control over their wages. I don't know.

Chairman Thompson.— You don't know how much they do get?

Mrs. Kelly.— No, sir.

Chairman Thompson.— It is a fact that the Interborough and the B. R. T. both do employ women twelve hours a day, seven days in the week, isn't it?

Mrs. Kelly.— I think the statement has been made public quite recently their hours have been cut from twelve to ten.

Chairman Thompson.— But it is seven days, just the same?

Mrs. Kelly.—I think so. Isn't that a legitimate matter of inquiry?

Chairman Thompson.— Yes. In this connection I was looking for an anonymous letter written by someone in the employ of the General Railway Signal Company in the construction of signals in Fourth avenue. It was not signed, but it said briefly this, that they are employed and underpaid, and required to work ten hours, and that they had to do that without making any outcry on pain of being dismissed and people brought from Rochester or Buffalo to take their places, and that was anonymous. He said the reason why the letter was anonymous was obvious, and if it was known he had written the letter he would lose his job, and

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it seems to verify your statement that the subways are being built for $1.35 and the hours of ten hours a day.

Mrs. Kelly.— I do not know about the hours, but I am quite sure of the correctness of the figures.

Chairman Thompson.— Was there anything more you had in mind?

Mrs. Kelly.— We are very much interested in knowing the line of inquiry of this Committee with regard to those two general lines of employment.

Chairman Thompson.— I see. The object of this Committee probably is served by ascertaining information as to the administration of the Public Service Commissions Law. For your information, the Public Service Commissions Law provides for two districts of the State and a Public Service Commission of five members in each, given the rights of supervision and regulation over all the companies concerning which you inquire, and they are, in turn, inquirers themselves and investigators with rights to demand the books and have a general supervision of all these concerns, and get from them such information, including the kind you ask for, as they think the public would be interested in. We are investigating the investigators, and it begins to look and at least it is fair to presume that the Public Service Commission of this district will entirely change in personnel very shortly, and you will have a new Public Service Commission in this district, and probably the best this Committee could do in relation to the matters that you have spoken of so far would be to refer you to them and ask them to take it up and work with you, because it is a subject they should take into consideration, because they are the rate-fixing power. When we have finished, of course, we will make recommendations, and we will make recommendations to the Legislature in relation to the Public Service Commissions Law, if we think it needs amendment, and we will also make recommendations to the Public Service Commissioners in matters of practice, and if you will bring to our attention specific cases before we adjourn or before the inquiry is

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done, specific cases, coming within your idea, we will take that up with a view of recommending it to the Legislature or the Public Service Commission, whichever seems proper.

Mrs. Kelly.— How long will the Committee presumably be in session?

Chairman Thompson.— That is a question that has been asked me at least two hundred and fifty times in the last forty-eight hours, but I cannot answer it. We will be here until we get through.

Mrs. Kelly.— We could submit a brief.

Chairman Thompson.— Could you do it within ten days? Someone has been afraid I might have designs upon removing Colonel Hayward, but we regard him as a new Commissioner in this district.

Mrs. Pauline Goldmark.— My question is addressed to this point: Does this Committee regard the Commissioners' power so broad that they are authorized to fix actual rates in granting, for instance, the franchise which was granted to advertising companies and the news stands?

Chairman Thompson.— That is another matter I have some information on I was going to bring to the attention of the Committee. I did not know that news stands were subject to the jurisdiction of the Commission.

Mrs. Goldmark.— The fact is the contract was given to one who in turn employs women at news stands, and before that contract was given the last time, we made an application asking that the hours be fixed and rates of wages be fixed, and that was not done by the Commission, without a clear understanding on our part whether they refused to do it on the ground of the lack of authority or otherwise. The fact is, while the women are supposedly protected by the Labor Law, yet that is very difficult of enforcement, and our best efforts to get it enforced by the State Labor Department have been practically without result, and the women are working very long hours, and have an additional grievance that they don't get proper luncheon hours,

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and sometimes none, and sometimes not until late, and the hours vary very much in different stations, and that seemed a question in which the public service franchise was granted, in which we did not get the stipulations as to wages and hours which would seem to us desirable, and we address that question to you as Chairman of this special Committee on this point, whether the Commission really has power to make those two stipulations?

Chairman Thompson.— I think the Public Service Commission have power and have the jurisdiction in regard to these subjects that you mentioned, but this Committee will take it up and we are going to make recommendations to the Legislature, and if they have not the power I am sure it will be the policy of this Committee to recommend to the Legislature that they give them this power.

Mrs. Goldmark.— We are just turning the light on that one spot this afternoon.

Chairman Thompson.— It should be certainly taken into account and recommended, and I haven't any doubt but what they have the power, and I expect you will find that in every rate case they always take plenty of time to consider a rate case when they are going to lower the rate. They don't always take much when they are going to raise the rate, but when they lower it, they take lots of time, from three to five years generally. I think they probably take two or three times more than the laborer finally receives the benefit of. I think they consider it very carefully, but I doubt whether the employees receive benefit for that consideration.

Mrs. Kelly.— It never was considered at all in this case in reference to the twelve thousand women in the Telephone Company within the year, and the employees of the city, the men working through the contractors have no assurance as to what they should get. No one knows whether the prevailing rate is $1.35 or $1.50, and the men working for one contractor get $1.35 and for another, $1.50 a day.

Chairman Thompson.— The question of wages is regulated largely by the question of supply and demand, but if you get to

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the point of fixing a rate by the Public Service Commission and using it as an excuse to keep the wages at the present rate and preventing increase or lower wages, it should certainly receive some attention.

Mrs. Goldmark.— Who is to determine what the prevailing wages are in the question of the sand man in the excavation on an application to the Public Service Commission to the secretary, and on an application this fall they denied any responsibility about determining what that prevailing wage should be, and they declare it was not their business, on the direct application to the Commission? They have declined that responsibility, and our point is to ask your Committee to consider whether it should not be made specific and they should consider the matter of wages. It is public employment under private contractors for the city.

Chairman Thompson.— We will take that question up and consider the questions very fully and you can file your brief within ten days, and if we are not in the city you can send it to me at Albany.

Mrs. Goldmark.— We will be very glad to.

Chairman Thompson.— I want to announce that Mr. Schneider was to be here at 2 o'clock, and he has not arrived, and we will have to adjourn his appearance until some future time.

AFTERNOON SESSION

WILLIAM S. MENDEN on the stand.

Examination by Mr. Smith:

Q. Mr. Menden, when the plans and specifications for the Fourth avenue signal system had been finally completed and submitted to these contractors they in turn submitted bids to the Municipal Railway engineers or to the company? A. Well, the bids were all submitted to the chief engineer.

Q. And those came to you? A. Yes, sir.

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Q. And up to that time you had met none of the officers or agents of the signal system companies other than at the Public Service Commission and at your office? A. None that I recollect. I may have met them at different places.

Q. But there was no specific arrangements for entertainment by you or to you by them? A. No, sir.

Q. And up to that time there had been no financial transaction by you, the companies or by the agents of the companies or no necessity for any? A. None other than prior contracts let to them.

Q. Do you recollect in round figures the bids of these four concerns submitted as a result of that? A. I think so.

Q. Will you give them? A. The lowest was the Federal Signal Company which was $1,300,000. The next was the Union which was $1,500,000. The next was the General Railway which was $1,800,000. The Hall Signal Company over $2,000,000. I have forgotten it.

Q. And each of these bids was on identically the same specification? A. Yes, sir.

Q. And with the condition as to the possibility of subsequent installation of speed control? A. The speed control to be installed by the railroad company?

Q. Yes. A. Yes, sir.

Q. Up to that time had you known of the Simmens patent? A. No, sir.

Q. And never heard of it? A. No, sir, up to that time.

Q. Up to the time of the submission of the bids, opening of the bids, you had never heard of the Simmens patent? A. No, sir.

Q. And you had familiarized yourself as far as possible with this speed situation? A. Only as far as applied to control of trains on grade.

Q. But that involved the examination and discussion of the speed control situation and development generally, did it not? A. That we went into entirely with reference to our requirements and we did not go into the experiments made by others as to speed control prior to the time we received those bids.

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Examination by Chairman Thompson:

Q. Didn't you have just as much necessity for speed control as anybody else? A. The necessity for speed control on our system had not developed until the question of operating over heavy grades came up.

Q. I say you have the same necessity as any other road? A. I don't know.

Q. Don't you know anything about any other roads? A. I don't know.

Q. If there was a good speed control that come along that acted in the way they are trying to perfect this you would have to have it and install it in the B. R. T. system? A. I don't know. We might have to do that.

Q. You are just as much interested in the speed device as the New York Central or Interborough? A. I should say the Interborough. I don't know as we would be interested in the same way as the New York Central.

Examination resumed by Mr. Smith:

Q. Were these bids under sealed proposal? A. Yes, sir.

Q. Were they opened by you publicly or privately? A. They were opened in the presence of all the other bidders by one of my assistants.

Q. What assistants? A. Mr. Dwyer. It was not Mr. Dwyer — another man named Crabbs.

Q. What was his name? A. J. T. Crabbs.

Q. Is he still employed? A. No, sir.

Q. Where is he? A. I think in Pittsburg.

Q. Where is he employed? A. Not in the railroad business. I think with the Aetna Explosive Company.

Q. And do you know whether or not, as a matter of fact, the representatives of all of the companies were present? A. I think they were.

Q. Do you know the names of the representatives present? A. No, I do not.

Q. And how long after the bids were opened were they called to your attention as chief engineer? A. I think the same day.

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By Chairman Thompson:

Q. What date was that, do you remember? A. The record will show. I do not know the date on which the bids were received. I do not recollect.

Examination resumed by Mr. Smith:

Q. On the same day of the opening? A. Yes, sir.

Q. Was that a written statement? A. No, sir — verbal.

Q. What was the statement? A. In substance that they, the General Railway Signal Company, had just come into possession of certain patents which would enable them, they thought, to make a very attractive proposition to us including a speed control of a different kind.

Examination by Chairman Thompson:

Q. They waited until they found out they were the high bid? A. They waited until the bids were opened.

Q. Did you make an estimate on the cost of installation of these signals before these bids were received? A. No. We had an estimate made by our consulting engineer, J. V. Davies, based on the cost to the Manhattan of similar systems.

Q. How much was that? A. $2,000,000.

Q. Was it $2,450,000? A. I don't know. I don't remember.

Q. Will you furnish that information? A. We can get the testimony here.

Q. What was that based on? A. On the number of units of signalling included in our contract as compared with a similar number of units used on the Hudson and Manhattan.

Q. Now when you made this estimate you must have based it on some information as to what companies could furnish it for, didn't you? A. Well, they based it on the price the Hudson and Manhattan paid for similar equipments.

Q. From what company? A. They got it from both companies. Part from the Union Company and part from the General Railway Signal. I think the engineers based their estimates on the average price.

Q. Now at that time it was obvious to all people in railway circles that the Union and the General were together, wasn't it? A. No, sir. That was not our impression.

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Q. Wasn't it? A. No, sir.

Q. You never had dealt with any other company? A. With the Union and General, we dealt with.

Q. You never tried to with the Federal — you did not try to do that? A. Yes, on the loop.

Q. How did you do that? A. We advised them we wanted them in.

Q. That was the first time you ever had? A. The first time I ever knew of the Federal Company.

Q. Well, why did you base these prices in your estimate on the prices charged by the Union and the General? A. Well, I did not determine the estimate. I asked Mr. Davies to give me their estimate.

Q. That was all you had to do with it? A. Yes.

Q. Where are they — where is Mr. Davies? A. He has an office at 30 Church street.

Q. What is his name? A. J. V. Davies.

Q. Was he a member of a firm? A. Of Jacobs & Davies.

Q. Did you know of this joint contract that existed between the Union and General? A. No, sir.

Q. By which one company received 25% and the other 75%? A. No, sir, I did not.

Q. Well, now did you think Mr. Davies was a perfectly competent man to make these estimates? A. Yes, sir.

Q. What is the value of an estimate — what is the use of it — why do you have an estimate — what is it good for? A. Well, engineers' estimates are necessarily based on previous experience.

Q. That was not what I was asking you — but why do you pay money to get it? A. Well, they usually want those estimates. The people who finally determine the letting of contracts usually want an engineer's estimate as to the probable cost of work before bids are asked.

Q. What is the value of this — do they pay any attention to it? A. That is pretty hard for me to determine. We simply submit them.

Q. You had to pay for them? A. No, sir. We are not consulting engineers.

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Q. Well, the engineers spend their time in making this estimate and you paid for their time? A. Undoubtedly.

Q. And the estimates must have cost you something that you paid real money for? A. Yes, sir.

Q. And your railroad paid for it? A. Yes, sir.

Q. Now, what was the value of this — what was the object of this — why did you want it? A. I myself did not want it necessarily. I get those things up for the information of those to let the contracts.

Q. It is not of any value unless it is somewhere near what the work can be let for? A. It seems that estimates necessarily vary because contractors on work varies sometimes a hundred per cent.

Q. If he is a good engineer he will get very near what the work should be let for? A. No, sir, I don't think so.

Q. What is he good for then, if he cannot make an estimate somewhere near what it would be done for? A. At the present time many contracts are let fully 75% below previous costs. That is not unusual in the last two years.

Q. I made this preliminary to ask you why it was — that the contracts for this system was let for about $1,300,000 when your estimate was $2,400,000? A. All I can say, the trade between the railroad company with the General Railway Signal Company with reference to this signal installation was made between the president of our company and the president of the General Railway Company. Why they made such a low figure I do not know.

By Senator Lawson:

Q. All the companies put in bids along the same lines? A. But the contract was not made.

Examination resumed by Chairman Thompson:

Q. You mean by that, that came from the conference Colonel Williams had with Mr. Salmon, president of the General Railway Company? A. Yes, sir.

Q. Where was that conference held? A. In Mr. Williams' office.

Q. When? A. A short time prior to the letting of the contract.

Q. December, 1914? A. I don't remember the date.

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Q. Who was present at that conference? A. I was. I don't know whether anybody else was present or not.

Q. That is, you and Colonel Williams and Mr. Salmon? A. Yes, sir.

Q. Anybody else? A. I think their engineer.

Q. Mr. Howe? A. Yes, sir.

Q. And you four were present when that was arranged? A. I think Mr. Howe was. I know I was there with Mr. Salmon.

Examination resumed by Mr. Smith:

Q. When your subordinates submitted that proposition to you what did you immediately do in regard to it? A. I did not do anything on that date.

Q. Did you tell him to deliver any message or to say anything about it? A. Not that I remember. On the next day Mr. Salmon and his chief engineer came over to see me in reference to it.

Q. Mr. Salmon and his chief engineer came to you the next day? A. Yes, sir.

Q. And how long prior to the opening of the bids did you submit the matter to the contractor — how many days or weeks? A. We first submit our plans and specifications to the Public Service Commission. After their approval we submit them to the contractor and the time is specified in the form of contract. I do not remember the exact number of days.

Q. Can't you tell us, as a matter of recollection, whether it was one week or ten days or two weeks, or two months, or what length of time it was that the company had to figure on this matter? A. I think they were given three weeks and I am not sure but what they were given an extension after that.

Q. What was said between President Salmon, Engineer Howe and yourself at this first meeting subsequent to the opening of the bids? A. They explained what they proposed to offer in detail.

Q. What did they say? A. I do not remember the exact conversation.

Q. Give it in substance — who talked to you and what did he say? A. They came in to see me and stated just what they understood.

Q. Tell us what they understood? A. I can't tell you.

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Q. Give us the substance of this, where it was? A. In my office.

Examination by Senator Thompson:

Q. Who came? A. Mr. Salmon and his chief engineer.

Q. Who spoke first? A. I can't tell you that.

Q. What is the first thing you remember when they came in? A. I haven't any recollection.

Q. You can't remember the thing that was said at all? A. There was no specific thing.

Q. There must have been something said by someone when they got in there? A. I suppose they said what they usually would say.

Q. Tell us your recollection? A. I cannot tell you.

Q. Well, give us the first thing you remember that was said down there that day at all. How much salary are you drawing? A. That is not a proper question here.

Q. Well I have asked it and I think I will ask you to answer. A. Well, if you insist on asking questions like that, that is not material to this, I would have to ask our counsel as to what to do.

Q. Do you decline? A. Yes, sir.

Q. I direct you to answer the question. A. I will have to wait.

Q. I ask you to answer? A. I shall have to have time to consult counsel.

Q. You won't be given any time. A. That is an unfair attitude.

Q. Do you think it is unfair for the public to know the salary that the public pay you? A. I don't know.

Q. Will you answer that question? A. I think those are unfair questions.

Q. Do you think it is unfair for the public to know what the traveling public pay to you in the city of New York? A. I don't know whether they pay me.

Q. You don't know whether the traveling public pay you — you have not gone into it that far? A. No, sir.

By the Chairman:

Q. You may take this colloquy separately and give me a copy of it to-night at the hotel.

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Examination resumed by Mr. Smith:

Q. You can remember nothing of it that was said at the conversation in word or substance? A. It was not clear enough in my mind to remember a specific detail of the conversation.

Q. Let us get the specific? A. I cannot give it to you.

Q. Did Mr. Salmon say I will do so and so, or you say it was good, bad or indifferent? A. He did not offer to do anything. Simply came in to explain the details.

Q. In explaining he must have said, "We can do so and so, because so and so," or something. Now, it is not so long ago because you can recall it. It was an important proposition in your experience, was it not? A. I do not consider it was very important.

Q. The largest signal contract in the history of the work of any kind? A. At that time that did not appear that way. It just appeared like a thing that some contractor offered as a substitute for what he had previously offered in the bid.

Q. It had no importance on your part that the defeated contractor should come in and submit a different proposal that would let him again into the running? A. Did not seem abnormal to me.

Q. It did not seem abnormal? A. No. It is not unusual for contractors to come in and offer alternative propositions.

Examination by Chairman Thompson:

Q. It was not unusual with the B. R. T.? A. No, with railroad companies usually.

Q. I thought you said you did not know much about the other railroads? A. I don't know as to certain —. Prior to the time that the bids are opened publicly, the conferences are had with contractors with reference to letting bids. They were not always let to the lowest bidder.

Q. When did you say the custom of public opening has come about? A. Since the contracts have been let by the New York Municipal Railway.

Q. So the New York Municipal Railway have always opened them publicly? A. Except one or two at the beginning.

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Examination by Chairman Thompson:

Q. I want to know whether you can recollect any part of the conversation had there that day? A. Not in detail.

Q. I do not ask you in detail — you were asked to give the substance of the conversation, and I want to know if you can recollect any part of the conversation — of the substance of the conversation and if so, I want you to give the first part of it you recollect, or else I want you to say you do not recollect any of it before we pass that subject? A. The only recollection I have on that visit they came into our office with their engineer for the purpose of explaining the detail of the control proposition.

Q. I did not ask you that. I want you to tell me the conversation and if you say you cannot we will let it go? A. I cannot.

Q. You cannot tell any part of the conversation? A. I cannot tell any specific detail of the conversation.

Q. That is because you cannot remember? A. Because I cannot remember.

Examination resumed by Mr. Smith:

Q. You insist you cannot tell a specific detail. Now that has not been asked in this question, a specific detail. Will you tell me that you cannot remember the substance in words of any part of that conversation? A. I remember the substance of the conversation, not the words.

Q. Well, give us the substance of it? A. That is what I have been trying to tell you.

Q. Give us the substance of the conversation? A. Well, they explained the detail of the system.

Q. What did he say when he explained it in general and in substance, not in words, what did he say — they would put it up above or down below or use copper wire? A. He explained the Simmens system.

Examination by Chairman Thompson:

Q. If I could find out his salary I would know the degree of intelligence he ought to have? A. Understand I have not any objection to stating the salary.

Q. Well then state it? A. But I think it has no bearing here at all.

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Q. Well, we will find out before we get through. A. $25,000 a year.

Q. Now you are supposed for that salary to have intelligence enough to know what the meaning of the questions counsel asks. He has not asked you for conclusions. He wants the conversation. If you can remember it in detail give it and if you cannot, give the substance. Can you give the substance? A. I can give it to you in a general way.

Q. We do not want only the substance. Who spoke first? A. That I do not know.

Q. What was first said in substance? A. That I can't tell you.

Q. Was it good morning or good afternoon or good evening or good night or what? A. I do not know even whether it was in the morning or afternoon.

Q. Can you give in substance the conversation. We do not want you to tell what the talk was about. We have not asked you the subject. We have asked you the substance. There is a difference just like there is a difference between lattice construction and latest construction over in Brooklyn, the same thing? A. The best recollection of what occurred there.

Q. We do not want what occurred there — we want the conversation. You cannot give any of it? A. Our signal engineer was there. I do not remember whether Mr. Davies was there or not, but the thing was discussed generally in my office, the details.

Q. Did you have an appointment? A. Yes, sir.

Q. Were you waiting for them to come in? A. I don't remember whether I was waiting or not.

Q. Yet you do not remember what they said when they came in? A. No, I do not.

Examination by Mr. Smith:

Q. The meeting was by appointment? A. Yes, sir.

Q. And you brought your engineer and possibly Mr. Davies there preparatory to that appointment? A. Yes, sir.

Q. And you waited for these gentlemen to come? A. Yes, sir.

Q. And have you any clerk or employee who let visitors, business men into your particular office? A. Yes, sir.

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Q. Did he bring these particular people in on that occasion? A. That I don't know.

Q. Or whether they walked in themselves on their own responsibility? A. No.

Examination by Mr. Burr:

Q. As a matter of fact, they could not get in without the clerk announcing them? A. I don't know.

Q. You would not let anybody into your office without somebody announcing them? A. Yes, sir.

Q. These people had never been in before? A. Yes, sir, on another matter.

Q. Both of them? A. Yes, sir.

Examination by Mr. Smith:

Q. On other signal matters? A. Yes, sir.

Q. Now before we leave it, so as to be perfectly sure we are right about it, you recognize the question, the meaning of it that we have asked you, stating the substance of the conversation? A. Well, I think I do.

Q. You cannot tell what has been said here to-day by word can you, entirely? A. Well, I think I would have a hard time repeating everything that was said.

Q. Now you can tell it in substance, could you not? A. No, I could not. There apparently is not any meaning to the thing.

Q. Your definition as to the value of the discussion is not in dispute. We are not discussing that at all. The question is, can you tell the substance of what was said here to-day in your presence? A. I don't know whether I could two years from now or not.

Examination by Chairman Thompson:

Q. If you could not go back to your president and relate the substance of what has been said here to-day, he would reduce your salary or fire you mighty quick. You would have pretty good recollection on it if he asked you and called you? A. I would to-morrow but not in two years.

Q. I think you would in two years. You would try very hard to give him some details? A. I could not give any more than I am here.

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Q. We assume a man in your position understands what the question means. If you say you won't give the substance of the conversation, we will understand what he means by that.

Examination resumed by Mr. Smith:

Q. You say that these men have been there before. How well acquainted are you with this Mr. Howe? A. Well, my acquaintance with him dates from the time the General Railway Signal had their first contract on the Center street loop. I have known him since then.

Q. Never knew him before? A. No, sir.

Q. How long did you say you were acquainted with Mr. Salmon? A. The same time — a year.

Q. You never knew him? A. Never knew him before.

Q. Have you been over to Rochester since this signal matter came up? A. No, sir.

Q. You say Mr. Johnson has been? A. Mr. Johnson has been there, yes, sir.

Q. Was there any writing submitted by Salmon and Howe on the occasion of that meeting? A. No, sir.

Q. How did you remember it so as to use it in your business — did you make notes of it? A. Of the subject discussed at that time?

Q. Yes. A. We had subsequent conferences after that.

Q. At first did you make any notes? A. There was nothing of which we had to make any notes or record.

Q. Did you make any notes? A. No, sir.

Q. And you have no notes now of that first conference? A. No, sir.

Q. Did you have a stenographer there at the time? A. No, sir.

Q. When did you have your next meeting? A. I think a few days after that.

Q. How many? A. I think we had four or five meetings.

Q. The second one? A. I don't know when it occurred.

Q. How many days as near as you can recollect? A. I should judge a couple of days.

Q. And where? A. I think that was in my office.

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Q. As a result of the arrangements made on the occasion of the first meeting? A. Either that or arrangements made the following day.

Q. You don't know? A. No.

Q. Do you mean to say there was any possibility of your abandoning the subject of the occasion of this first visit without making arrangements for future discussion? A. I think we told them we would look over, discuss the thing between ourselves.

Q. You told them that on the occasion of the first day? A. I think something like that.

Q. That is your recollection? A. I do not recollect that specifically.

Q. Not specifically in words? A. On the first day they presented in detail what they proposed. Now we took that and analyzed it carefully between ourselves.

Q. Did you tell them you were going to take it? A. That I don't know.

Q. Tell them to come back again? A. I don't know.

Q. Tell them you would meet them again? A. I don't know we told them that. I think we must have told them that before they left.

Q. Was that proposition submitted in writing? A. No, sir.

Q. And two or three days you met again? A. Yes, sir.

Q. Mr. Howe? A. Yes, sir.

Q. Mr. Salmon? A. I think he had some other engineers after that, of his company.

Q. Who were they? A. I don't remember that. I don't know their names.

Q. Howe was not there you say, or was he there with their engineers? A. He was there with some other engineers.

Q. Whose names you do not remember? A. I think Briney, their sales manager, was there. I think he was there on the first day also.

Q. And who did you have there? A. Our signal engineer, and I think Mr. Davies was there.

Q. Was Mr. Waldon the borough engineer there? A. No, sir.

Q. Did they bring any writing with them on that day with regard to the proposition? A. No, sir.

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Q. And did you have any stenographer there to take notes? A. No, sir.

Q. Did you make any notes? A. No, sir.

Q. What was said by anybody on the occasion of the second visit in word or in substance? A. I cannot give you any more information concerning the second visit than the first.

Q. Is that because you do not remember? A. I don't remember.

Q. What was the subject of discussion on the second visit. They had submitted in detail on the occasion of the first visit. What did you do on the second visit? A. The discussion of different phases of it in operation, and whether it would serve our purpose.

Q. Now, on either of those visits did you discuss the phases of it and the effect it might have on the other bidders and the effect the other bidders might have on their proposition? A. No, sir.

Q. Never? A. I never discussed that with them.

Q. At all? A. No, sir.

Q. At any time? A. No, sir. Mr. Salmon asked me whether his alternative proposition would be considered and I told him that was a matter the president would have to determine.

Q. Had you reported the result of the first visit to the president of your company? A. Yes, sir.

Q. On the occasion of the second visit? A. I am not sure whether it was after the first or second visit, but either after the first or second I reported the matter to the president.

Q. What did you report to him? A. That the General Railway Signal Company had offered to provide as an alternative the system of cab signal and speed control differing from the one we were experimenting with and which I thought — looked to me as though it was a reasonable arrangement.

Q. It looked to you when they submitted it as a reasonable arrangement on the first occasion that you saw it? A. Yes, sir.

Q. What did the president say? A. He asked me to go into it in detail further and give him our conclusion after we had completed our conferences.

Q. Did you tell him the proposition also included a reduction of several hundred thousand dollars in the bids that they had

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made? A. I did not know that at the time. The General Company did not tell us what reduction they would make, but they said it would involve a substantial reduction in their price if they would be permitted to install the cab and speed control system.

Q. Did you tell that to the president on the first occasion? A. On the first or second.

Q. Now as a result of that second visit, did you have occasion to see them again? A. I think we had four —

Q. As the result of the second visit, did you have occasion to see them a third time? A. Yes, sir.

Q. How many days after the second visit? A. Three or four days I think.

Q. And who was present on the occasion of that discussion? A. Practically the same.

Q. Were there any additions? A. Not that I remember.

Q. Was this Mr. Waldon present on that occasion? A. Mr. Waldon was never present in any of our conferences.

Examination by Chairman Thompson:

Q. Did you ever have any conference with Mr. Hall? A. In this matter — we had some talk with him in reference to a previous speed control.

Q. Nothing in reference to the General Railway or Simmens — never had any talk with Waldon? A. I think our engineer —

Q. Did you know Waldon was retained by the General Signal? A. No, sir. I read it in the newspaper.

Q. Would you be surprised to know he had received $500 as a retainer in that matter? A. No, sir.

Q. You were not surprised? A. No.

Q. Why not? A. I knew Howe had talked to Waldon about this proposition.

Q. How much salary does Waldon draw? A. I don't know.

Q. As much as you do? A. I don't know.

Q. He has as much to see to as you have? A. I don't know. I don't know what he looks after.

Q. Is it customary for men in positions down here to take outside retainers like that of five hundred dollars? A. I imagine under certain conditions that might be proper.

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Q. Do you do it? A. No, sir.

Q. Never receive any money outside of your salary from an individual? A. No, sir.

Q. You would not think it would be proper in your business? A. It might be.

Q. But you have not seen any occasion where it might be proper? A. Nobody offered it to me.

Examination by Mr. Smith:

Q. What was the discussion in words or in substance on the occasion of this third visit? A. I think the final details of the system, the engineering details, were discussed, so that they could make their financial proposition.

Q. With notes? A. No, sir; no notes.

Q. Plans, blueprints or profiles? A. No, sir. They had some plans of the Simmens device.

Q. As an abstract proposition? A. Yes, sir, but not as applied to our system.

Q. And you had made none in your office? A. No, sir.

Q. Testing out the question? A. No, sir.

Q. And what did you do, or what did your engineering force do between the occasion of the first visit and this third one other than made a report to your president in relation to the Simmen patent? A. We discussed the different features of this device as applied to our operations.

Examination by Chairman Thompson:

Q. What did he say about it? A. To find out all the things we would have to provide for.

Q. What was said about it, you say you discussed it — what did you say? A. Well, we discussed things.

Q. What was said — you know what I mean? A. No, I really do not.

Q. You don't know what I mean? A. No.

Examination resumed by Mr. Smith:

Q. That discussion was between yourself and your subordinate? A. And our consulting engineer. I think that Stillwell & Company, who are also consulting engineers, were asked about it. Not in conference with the signal company.

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Q. Their offices are here in New York? A. Yes.

Q. And what is the name? A. A. L. Stillwell & Co.

Q. Now, can you give us the substance of the talk with these gentlemen on the occasion of that third visit? A. No more than the general discussion.

Q. Had you yet arrived at a point where they did tell you how much they would reduce the bid? A. No, sir.

Q. You had a fourth visit as a result of the third one? A. They did not give us — we asked them to take that up with the president and make their submission as to what they would do, with him, and not with us.

Q. You had a fourth conference? A. I am not sure. I think there were more.

Q. But at that third or at a subsequent conference, you recollect that you did tell somebody in connection with the General Railway Company to take the matter up with the president on the subject of specific reduction in price? A. Yes, sir.

Q. That you do recollect A. Not as a specific conversation.

Q. But you recollect in words or in substance of having told somebody during the time to do that? A. No. The substance of it was that we would thrash out the engineering details, and after we got to a point where we believed what they proposed could be seriously considered, that they would say that to the president, aud let the Signal Company's president take it up with Colonel Williams.

Examination by Chairman Thompson:

Q. Now, what did they propose? A. As to money or engineering details?

Q. Both. A. Well, they proposed, as far as the physical part of the apparatus, to install a cab signal and speed control system, in place of what we specified. That was their proposition. That is not their contract at the present time, you understand, but that was their proposition, and then as to price, they discussed that with Colonel Williams, and at first their proposition was higher. Their price that they offered to do this for was substantially higher than the Federal Company's bid.

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Q. What was the price? A. It was a verbal discussion. They did not submit it in writing.

Q. What did they submit? A. It was higher. I think it was one million and between four and five hundred thousand dollars.

Examination by Mr. Smith:

Q. That was the first chance that they got to get the contract as between their original bid? A. Yes, sir.

Q. They still had it higher? A. Yes, sir.

Q. And where did you get the information that it was one million four hundred thousand dollars? A. It was a verbal statement.

Q. Made where? A. At a conference in Colonel Williams' office.

Q. Subsequent to these conferences that you have discussed? A. Yes, sir.

Q. How long after was that conference, after the third one that you had? A. I should say three or four days or a week.

Q. And who was present? A. I think that I was the only one present for the railroad company, and Mr. Salmon, his chief engineer.

Q. That is Howe? A. Yes, sir. Possibly their sales manager, Briney — although I am not sure of the latter.

Q. And who submitted the figures? A. Mr. Salmon.

Q. What was said as a result of his submitting figures at that time? A. Colonel Williams told him, as I remember, that he would not submit to his contractors any proposition by the General Company that did not involve a substantial reduction over the total amount offered by the Federal Company. That is, that he would not consider any proposition of letting the contract to anyone else except the lowest bidder, unless there was some substantial reason for it.

Q. Was that the entire conversation? A. The substance of it. Salmon of course argued as to the advantages of a cab signal system, and that the company should be willing to pay more for such a signal.

Q. That was the substance of the entire conversation? A. Yes, sir. They discussed the detail figures as submitted.

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Examination by Chairman Thompson:

Q. What did they say about them. A. Colonel Williams asked them why there should be such a discrepancy between these bids, and why the unit prices should vary to the extent they did.

Q. What did he tell them? A. They gave different reasons.

Q. Well, what were some of the reasons? A. I don't remember. Among the claims was that the low bidder could not do the work for that sum of money and do a proper job; that their overhead expense in developing signals was very heavy and their prices necessarily would be a substantial per cent. greater than the actual cost of labor and material.

Q. Whose overhead expense? A. The Signal Company.

Q. They said the Federal people could not do it for the low bid? A. They said they could not do it and make money.

Q. And then they said that their overhead expense was such that they had to bid higher? A. That they thought that any signal company would have to have a substantial per cent. overhead charges.

Q. That was the explanation they made for their high bid of eighteen hundred thousand dollars? A. Yes.

Examination resumed by Mr. Smith:

Q. Now, there was nothing definite arrived at on that occasion, was there? A. I think there were two conferences with reference to price.

Q. Well, they did not offer on that occasion to reduce it below the fourteen? A. The reduction did not occur on that day. I think they offered some reduction, but not a reduction —

Q. How much did they offer that day? A. I don't know.

Q. You don't remember? A. No.

Q. How many days later was the next conference? A. Three or four days after that.

Q. And where was it had? A. Same place.

Q. Colonel Williams' office? A. Yes.

Q. And who was present? A. The same people.

Q. And give us the substance of the talk on that occasion? A. They discussed figures and I think one was to meet the Federal Company's price, but that offer was rejected.

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Q. By Colonel Williams or by you? A. By Colonel Williams, and then they made a final offer which was the price that is specified in the present contract, and that offer Colonel Williams indicated that he would take up and consider.

Q. Told them so in substance? A. That he would take it up and consider.

Q. And the rest of it — the talk back and forth in substance as near as you can recollect? A. That was about all of it.

Q. That was the substance of the entire conversation? A. Yes.

Q. And did they retire then? And did you have some discussion with Colonel Williams on that day in regard to it? A. I don't think there was much more discussion, not between the engineers and the president of our company.

Q. You say there was no more discussion between them? A. I don't remember any specific discussion.

Q. And did Colonel Williams make any inquiry of you other than you have indicated as to the character of the plan that they proposed, as to its availability or efficiency? A. He discussed that with us, yes.

Q. When and where? A. On different times during this period of two weeks.

Q. The entire proposition covered two weeks? A. Yes, sir.

Q. What did he say about it? A. Well, he asked our judgment as to the value of that, if it could be made successful.

Q. If it what? A. If it was made successful. If the Simmens speed control system could be put into successful operation on our system, as to the value of it.

Q. Didn't you have that right in the first place? "If it could be made successful," wasn't that the actual fact, and the actual course of the discussion, if it could be made successful? A. It was a new and untried device, so far as the operation we wanted it for, and it was just a question of judgment.

Q. Where was that an old and established device? A. I do not think it was a very old device.

Q. Where was it an established device? A. Different parts of what is proposed had been in operation in this country.

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Q. I did not ask you that. Where was this thing that they proposed in established operation? A. What they proposed to furnish us had not been in operation, the system complete.

Q. Anywhere? A. Nowhere.

Q. Now, you and Colonel Williams discussed the proposition as to whether or not if it could be made successful, it would be worth the money? A. Yes, sir.

Q. And you had quite serious discussions about that? A. Not as to that feature of it; there was no question about that. If the system can be made successful, it is worth many times that money. The question is were we justified in trying and how we could try it without interfering with our service. Those were the only questions that really troubled us, because the contractor assumes responsibility as to performance.

Q. Now, how much variation did you make when you finally got to accepting the contract — how much variation did you make in the original plan? A. The plan of contract or physical plan?

Q. The physical plan to bring it within this lower price? A. No change made in the physical.

Q. Absolutely none? A. The thing was not submitted in detail.

Q. I mean did the General Railway when it came down to this reduced price, agree to have that contract to install the system of signalling according to the plans and specifications upon which the Hall Company bid, and upon which the Federal Company bid, and upon which the Union Company bid, yes or no, and then we will go into detail?

Chairman Thompson.— Work is being installed on this same specification that you put out originally?

Mr. Menden.— No.

(Last question repeated by stenographer.) A. They agreed to install the signalling as per plans and specifications as per contract.

Q. Those particular plans and specifications? A. The contract that they signed. They had signed the contract in which they had agreed to do specific things, and in which we agreed —

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Q. Never mind about that — certainly they had plans and specifications, or they would not have made any sort of contract. Now, were the plans and specifications which are used in this contract, which they signed, the plans and specifications upon which the Hall Company bid, on this Fourth Avenue job? A. Yes, sir.

Q. The same one? A. The same one.

Q. And complete in all the details of the Hall Company bid? A. There are some additional clauses in the plans.

Examination by Chairman Thompson:

Q. Other modifications when the contract was made? A. Yes, sir.

Q. Those modifications are different from the specifications submitted to the bidder? A. Only in the sense they are additional specifications for the system itself, if the cab system is not successful, is just the same as on what the other contractors bid. It is only modified to permit trying out this new system.

Q. Was there more than one device submitted? A. They proposed a scheme of control. They did not submit a scheme until later. They had submitted in detail, from time to time, this apparatus, and have changed it until now we have a definite detailed apparatus from them that they are going to install.

Q. When did you get that? A. The final detail we got about sixty days ago — contact shoes.

Q. Have you got a copy of that? A. Yes, sir.

Q. Will you furnish it to the committee tomorrow? A. This relates to the contact shoe, the last detail.

Q. Did they submit only just this Simmen device, or did they submit another? A. They are submitting a system of speed control which includes the Simmen patent scheme, which is covered by the Simmen patent.

Q. Did they submit any other complete arrangements than the Simmen at the time you had these conferences? A. I don't know just what the Simmen patent covers.

Q. Outside of the Simmen, did they have another — did they submit two schemes for speed control, or just the Simmen? A. As far as I know what they proposed is tied up to this Simmen patent.

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Q. Did they submit two devices at the time they talked in these conferences, or did they submit only one? A. Only one.

Q. The Simmen device? A. A scheme — it was a scheme of control.

Q. There is no model, I know that. A. No.

Q. Now, didn't Salmon or some one on behalf of the General Railway Signal Company, submit two separate schemes for speed control or cab control, or whatever you call it, to you? A. I only remember of one that they submitted to us — the General Railway Signal.

Q. Wasn't it a fact that they submitted two to you and when you went to Colonel Williams, you recommended the Simmen as between the two? A. I do not remember of any other.

Q. And you are sure about that? A. Yes, sir.

Q. If there was any other scheme or any other patent, or any other thing proposed for the same kind, to produce the same kind of a result, you would remember it now? A. Yes, sir. The other companies submitted other plans.

Q. What is the Simmen scheme? A. What I understand by the Simmen patent or scheme is a method of controlling the speed of a train automatically, depending on the speed at which the train is running. That is, there is a connection between the wheels, the rapidity with which the train moves and the control of the train. I do not know what the Simmen patent is or the extent to which it goes.

Q. Who does know about that? A. I don't know.

Q. Anybody employed by your concern? A. No, sir.

Q. Nobody knows? A. They may know that.

Q. Did you know whether or not there were any other patents pending at that time, or in the patent office, or had been issued for similar devices? A. I know of somebody telling me.

Q. Did you know it at that time? A. I did not pay much attention to it.

Q. Is there anybody employed by your company that gave you that information — did you investigate into it? A. We investigated only the things submitted by the respective signal companies. There were two or three schemes of speed control submitted to us by the other signal companies.

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Q. What were they and who submitted them? A. The Federal Company submitted one, and the Union Company.

Q. What were they? A. I do not remember the detail; except the Federal Company plan was a modification of the so-called Jones system which they calculated was in successful operation in some road in Virginia. They explained it at that time in detail, but I do not remember the detail of it now.

Q. Was that a statement by the Federal Company subsequent to the opening of the bids? A. Yes, sir.

Examination by Senator Lawson:

Q. Mr. Menden, as an engineer of the B. R. T., it was naturally your duty to look into details of these speed controls as submitted by the companies, to advise your company what was the best? A. Only as a matter of comparison between what was submitted.

Q. As your judgment of the B. R. T., that would be your duty? A. Of what was submitted.

Q. In view of that, you did look in detail into these various — A. I did not go into all the details personally. I had different phases of it examined, and discussed it with our different subordinates and engineers.

Q. You did reach a conclusion? A. Yes, sir.

Q. And you submitted that conclusion to Mr. Williams? A. Yes, sir.

Q. Now, tell us, if you will, was your conclusion at that time that the Simmen speed control was the most practicable and was the best that had been submitted? A. Yes, sir.

Q. You must have reached that conclusion in some manner by which you can tell us how you made the comparison, or your engineers made comparisons so you could advise your company to that effect? A. We were in doubt as to all these speed control devices on account of none of them having been in complete satisfactory operation anywhere that we knew of. From the data submitted, it seemed to us that that proposed by the General Signal Company would be possible of best development, and we also recommended to our president that the company should not itself assume any responsibility in reference to performance, but that

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obligation should be put on the contractor. So that the company even at worst would have a system of signaling such as our original plans and specifications contemplated. If the system satisfactorily developed, that it can be satisfactorily operated, we have a much better signal system than the old, and permits of much more rapid extension and easier extension.

Q. Well, up to the present time, as to your conclusions with reference to the Simmen speed control, arrived at that point you can give an opinion whether it is susceptible of development? A. It looks very good. We believe it will be successful right now.

Q. In other words, you believe that your conclusions that you made at that time are going to mature to the benefit of all concerned? A. Yes.

Examination by Chairman Thompson:

Q. Now, if you had installed the work on the Federal bid, you could have used this device just the same? A. No, sir.

Q. Why not? A. This operates on an entirely different principle.

Q. Mr. Menden, you are putting in the signal system on the specifications that the Federal people bid? A. Modified.

Q. Modified how? A. To permit of adding cab signal and speed control.

Q. What do you have to add? A. You cannot use the ordinary tripper arm that is in use now that trips the air valve as the car passes.

Q. What is being installed over there now that is different from the specifications on the Federal bid? A. They put in the place of a tripper arm a metal ramp.

Q. They have been installed? A. The contact used on the cars has not been installed.

Q. Was that metal ramp called for on the other? A. It was the part that we left for the Signal Company to submit.

Q. Perfectly possible for the Federal people to install? A. Physically. I don't know whether any patent interference or not.

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Examination by Assemblyman Burr:

Q. When the Senator asked you a few moments ago to tell us what the Simmen device was, do you remember what your answer was? A. No, sir.

Q. You don't remember what your answer was? A. No, sir.

Q. You said it was some system in connection with the wheel? A. That is the speed control.

Q. Now, if this Committee were a body of engineers, and some of those gentlemen should ask you what the Simmen device was, would you give them that kind of an answer — wouldn't you try to explain to those men what you knew, what you could show to them, what the Simmen device was, if they asked you? A. Your question is misleading, in that it is not a Simmen device.

Q. You could have told us what you knew about that Simmen system if you wanted to? A. I don't know much about it.

Q. You do not? A. No, sir. To the extent that it has been submitted to us. I do not know what the Simmen system includes.

Q. You said you investigated it and recommended it? A. We investigated it so far as necessary to apply anything that is covered by his patent to our system.

Q. Now, the answer that you gave to the Senator was like some school boy, not like a high-class engineer would give to a competent committee. A. I do not know what you want.

Examination by Chairman Thompson:

Q. As a matter of fact, the exact device that is covered by Mr. Simmen's patent, you never did have any intention of installing did you? A. The General Company stated to us, the device Mr. Simmen had they would not use. They never offered that to us.

Q. What you intended to do was to get something you could think of and get patented as an improvement on that in the future? A. They said they could do certain things.

Q. Before we go any further, just answer my question. You intended to use, if anything, some improvement to be thought of and invented and patented afterwards, didn't you, if you ever used anything? A. They explained to us —

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Q. Just answer my question — isn't that true? A. No, sir, it is not true.

Q. You are an engineer — have you installed or do you intend to install any system for which, or which was completely covered by patents in and before December, 1914? A. We have never concerned ourselves about patents.

Q. Will you answer my question? A. I don't know.

Q. Now, you recommended — A. My answer, of course, is misleading.

Q. That is all right. You are the engineer that recommended to the Public Service Commission, First District, the letting of this contract to the General Railway Signal Company, because of the Simmen patent, aren't you? A. No, sir.

Q. Aren't you the engineer that wrote the letter to the Public Service Commission? A. No, sir.

Q. Who did? A. Colonel Williams.

Q. On whose report? A. After our conference.

Q. Now these conferences that you have in these matters, do you report them to anybody? A. No, sir.

Q. You do not report them to the president or anybody else? A. Well, conferences that are verbal — sometimes we report them and sometimes we do not.

Q. Colonel Williams is an engineer? A. No, sir.

Q. Does he base his letter on information from you or that is in support — A. On myself and engineer.

Q. And the letter to the Public Service Commission was based on what? A. On myself and consulting engineers.

Q. Who are they? A. Jacobs and Davies, and Stillwell & Company.

Q. What do you do? A. I do not employ them.

Q. Who employs them? A. The company.

Q. What do they keep you for? A. I don't know.

Examination resumed by Mr. Smith:

Q. Mr. Menden, for our benefit, I want to know if I have this correct. The final result under the contract was that the General Electric Railway Signal Company install the signalling system provided for by the original plans and specifications, with the

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addition that it provided this ramp work for the use of the Simmen scheme of patent, is that so? A. That is one of the things they installed. Of course there are a lot of other things in addition to that. The entire scheme of wiring which is very complicated is very different than it would have been under the old specifications, and it is installed so the new system can be tried out without interfering with traffic, or interfering with specifications which the specific system provided.

Q. And in addition to that, they agreed to provide this cab control at a specific price per car if used? A. Yes, sir.

Q. Now, is not the General Railway Signal Company under obligation by the terms of that contract to install the wiring under the plans and specifications originally made out, if it ultimately turns out that their scheme of cab control is a failure? A. Yes, sir.

Q. So that at the time the contract was made, the company did not have sufficient faith in the Simmen patent, but what it protected itself by that provision of the contract — that is true, isn't it? A. Yes, sir.

Q. Now, as a matter of fact, the Simmen proposition as submitted by the General Railway Signal Company is what you would call yet a possibility instead of a system? A. Well, it is not entirely finished. It is more than a possibility.

Q. What? A. It is more than a possibility.

Q. When it ceases to be a possibility and becomes an actuality, why, then it becomes a system. Is it an actuality yet? A. No, sir.

Q. Then it remains a possibility — is that not true, yes or no, please? A. Yes.

Examination by Chairman Thompson:

Q. Now, Mr. Menden, did you have any conferences with Colonel Williams, or did Colonel Williams have any conferences with your consulting engineer, at which you were not present? A. None that I know of.

Q. So all the conferences in this matter you were present at? A. I think all of them, yes, sir.

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Q. And I understand you, you did not know anything about these speed control devices prior to the submission and opening of these bids in 1914? A. What do you mean by "these?"

Q. Any speed control devices? A. I was familiar with some of them that had been tried.

Q. What ones? A. The Jones system is one.

Q. Was that a failure? A. It was in operation on a locomotive — one or two.

Q. What does it do? A. It merely retards the speed of a train when it passes a certain trip on the track.

Q. It is not an automatic speed control, as that term is recognized? A. I do not think that term has been used enough to mean a definite thing.

Q. Don't you think it means a definite thing in railroad circles? A. Generally it means that you control the speed of the train. But what we mean by our cab speed and signal control includes more than that.

Q. Now, I am not going to charge you anything for this scientific engineer's information that I am going to give you, but it is a fact, isn't it, that the New York Central Railroad is making the foremost efforts in railroad circles to obtain a proper automatic speed control and stop device? A. Is this information or a question?

Q. It is information included in a question. Is that true? A. I am not familiar with all the things they are doing.

Q. Haven't they got a committee that have been sitting all the time for the last two or three years, representing all the New York Central lines? A. I don't know that.

Q. You don't know that? A. No, sir.

Q. And aren't they working in conjunction with the Interborough Rapid Transit Railroad Company of the city of New York? A. I do not know that myself.

Q. And aren't they working in conjunction with the Brooklyn Rapid Transit lines — aren't you people paying attention to what they are attempting to find in that regard? A. We have not taken up anything that they are doing.

Q. You have not? A. No, sir.

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Q. You do not get any information from there? A. We have not asked for any.

Q. And do you know the fact embodied in my last two questions to be true or not? A. Except as you have told me.

Q. That is information to you? A. Yes, sir.

Q. You did not know that before? A. No, sir.

Q. Did you know there had been over three thousand patents on supposed devices for automatic speed control issued by the United States patent office? A. I did not know there were that many.

Q. Did you know there were over fifteen hundred? A. No. I knew there was a good many, but I never knew how many.

Q. You never had any idea? A. No.

Q. Did you know that in order to install one of those devices, that it costs a lot of money for installation, so much money that if it were thrown out and a better device should be invented afterwards, it would cost the railroads a good many millions of dollars to throw it out and put in the new? A. There would be a considerable expense involved in trying out a system.

Q. For that reason, isn't it the policy of the railroads to be slow in adopting any device until it meets the absolute perfect requirement or as near perfect as ordinary intelligent engineering could possibly think of? A. That is always true when a railroad company has to spend money.

Q. That is true of all railroads in reference to the automatic speed control? A. But we would not add it either unless the signal company assumed the burden.

Q. The signal company assume the burden of ripping out that portion of the construction which was necessary to install the device, which might not be necessary for the new device, isn't that true? A. They do not take out anything. They are installing something now that gives us the protection.

Q. Here is what I am getting at. You install the Menden system or any other system and there comes along an improvement, you would have to go to a large expense to rip out things that are installed in order to accommodate the Simmen patent? A. If the system that the General Railway Company now proposed to install gives us the performance that we have specified,

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I cannot conceive of any reason of changing that for a great number of years.

Q. Gives absolute protection if it is what you want? A. If it is not we do not take it.

Q. If it don't give absolute perfect protection you cannot afford to install it at all because it would cost a lot of money to rip it out and make way for a perfect one, wouldn't it — answer that? A. The change might be only nominal.

Q. It might cost a great deal? A. And it might cost very little.

Q. And it would cost something? A. It might be entirely nominal.

Q. It might cost a good deal? A. Under that decision the Public Service Commission, when the General Company have completed their work and installed the systems, at that time the decision will be made.

Q. You know what I mean? A. I do not.

Q. You know I am attempting to ask you, if you installed the Simmen system and there was a perfect system thought of afterwards it would cost you some money to take out the Simmen system? A. Yes, sir.

Q. And there is no railroad in the world that is going to install an imperfect system? A. The progress in the art is so rapid you cannot have a perfect system that is five years old.

Q. There is not any perfect system found up to date of all the people that are looking for it? A. I understand it is not perfect.

Q. You cannot afford to install anything that is not perfect? A. You have to install something.

Q. There is not any other railroad installing any other system is there except the B. R. T.? A. Installing any system?

Q. Yes. A. All roads are installing some system.

Q. Perfect speed control? A. I don't know of any perfect speed control system.

Q. And you are not installing any perfect speed control system? A. We are trying to get it.

Q. You are not installing it now? A. We are installing what we believe will be one.

Q. You are not installing one? A. My judgment is, we are.

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Q. What are you doing to install it? A. Going right ahead and putting in all the necessary connections.

Q. What necessary connections? A. The wiring.

Q. Wiring where? A. In the subway and along the line.

Q. What wiring? A. Between the signals and connecting with transit service.

Q. What wiring — you do not have to have with the original specifications? A. A great number of them.

Q. They are some wires you say that are installed that were not called for in the original specification? A. I could not definitely tell you. There is a good deal more wiring being installed now that would not be required under the specifications.

Q. Explain that for the record — what is it installed by the General Railway Company under their contract that was not included in the original specifications when they were made? A. I could not explain that in detail because the number of wires for a given signal system at any point of the railroad cannot be determined until complete plans are made of all the trains. Those plans have not been made.

Q. Then they are not installing them? A. They are not installing the specifications system.

Q. You are trying to make this Committee think there is something being installed, that you intend to install? A. No.

Q. I want you to tell us in detail, in engineering language, which means exact language, so we can go and find it, what the General Railway Signalling Company are actually installing over there in Fourth avenue that was not covered by the original specification on which the Federal Signal Company bid? A. They are installing along the track at specific locations the steel ramps together with the steel wiring to connect with those ramps, which would not be included in the old system.

Q. How much money in value have they spent on that particular thing? A. I don't know that. The expenditure of money is largely in their factory and in developing apparatus.

Q. How much have you paid them on that contract A. I don't remember.

Q. It is about $100,000. A. The total amount paid?

Q. Yes. A. I don't think it is in excess of that.

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Q. And of that sum what proportion of it has been paid for these devices you have just named? A. A very small proportion.

Q. Well, how much? A. I don't think over 25 per cent. The principal payment is for interlocking.

Q. Has anything been paid to them outside of the general original specifications? A. Nothing that would not be included in the original specifications.

Q. They have not received a dollar for anything else? A. No.

Q. When you made this estimate of $2,400,000 which you say Davies got up for you — what did you do with that estimate? A. I sent that in to Colonel Williams together with the bids. I may have sent him that estimate before. I am not sure.

Q. Is that in your files? A. Yes, sir.

Q. Will you produce that to-morrow? A. Yes, sir, I would like to get a memorandum of the different things you expect me to bring over.

Q. Did you read the estimate? A. Yes, sir.

Q. What was your opinion of it? A. Well, I thought it would be difficult to make a very accurate estimate for signalling such as we suppose. That the estimate as submitted merely would be taken for what it was worth. It represented the cost of this system as we proposed if the same prices that controlled the contract with the Hudson and Manhattan.

Q. What company controlled the Hudson and Manhattan? A. The Hudson and Manhattan Railroad Company.

Q. The Union installed the signals there? A. The Union installed part and the General the remainder.

Q. Did you know that they had this joint contract, joint agreement — I think you have already testified that you did not know the Union and the General had a separate contract? A. I did not know that.

Q. Did the Union have a bid? A. On our Fourth avenue contract?

Q. Yes. A. Yes, sir.

Q. You based you estimate? A. Jacobs and Davies based their estimates. They were engineers for the Hudson and Manhattan and they based their estimate on previous experience of a similar system for another railroad.

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Q. Based on the Union and General? A. Yes, sir. The General Railway and Union Switch and Signal are the same companies that installed.

Examination by Miss Loeb:

Q. This estimate of $2,450,000, which was based on the prices taken from the General and Union, which your engineers made, and the contract or bid that was offered of $1,300,000, and which was based on the same prices of the General Railway, wouldn't that be a fine assurance to the General Railway that they would get that contract, especially when your estimate was so high from your own engineer based on their own prices? A. First the contractor does not know the estimate of the engineer. And when I stated that the estimate was based on the cost of the signal to the Hudson and Manhattan — that is not a unit price.

Q. But it was based on prices that were given by the General and Union, weren't they? A. No, it was based on the cost of the Hudson and Manhattan.

Q. You said so. A. They furnished it to the Hudson and Manhattan, similar signalling, under I think a lump sum figure.

Q. What did you do with this estimate? A. It is in our files.

Q. Did Mr. Williams have that estimate? A. Yes, sir.

Q. Did you show that estimate to Mr. Salmon? A. No, sir.

Q. Did you show that estimate to Mr. Howe? A. No, sir.

Q. What became of the estimate? A. It is in our files.

Q. What was it used for? A. For my information and the information of the president of the company.

Q. Then when you got an estimate of the General Company for $1,300,000 for the proposition that your own engineers concluded would cost you $2,450,000, didn't you judge that a pretty low bid from the General Company? A. Not when we had the Federal bid alongside.

Q. Then did you disregard that estimate your own engineers made? A. Yes. We always do.

Q. What is the object of making it? A. I don't think they serve much purpose.

Q. Is it possible for any bidding company to have these estimates made by your engineer for their comparison? A. It is possible, but not probable.

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Q. Wasn't it done in this case? A. Not to my knowledge. I would be much surprised if it was.

Q. Didn't you give out the estimates to the bidders? A. No, sir; never do.

Q. Did you discuss with Mr. Howe or Mr. Salmon his estimate? A. No, sir.

Q. Sure you had no conversation about this estimate that your engineers had made for these bids, based on their own prices? A. Not at all.

Q. Would the engineer under you have any conversation of that kind? A. I would be surprised if he did.

Q. Why not? A. Because we never discuss it with our contractors.

Q. Your estimate was $2,450,000 for this work? A. It was over two million.

Q. The bid that carried was $1,300,000? A. No. The final contract was $1,293,000.

Q. Do you wish this to be a matter of record, that your engineers estimated this contract at $2,450,000, and were so far off the actual amount that you obtained this contract for as to almost double it? A. Yes, sir, that is a fact. It should go in the record.

Q. Wouldn't that be a fine proposition for any company that would come in to bid to get the estimate that was given to your company and bid according to that estimate? A. I think the average contractors who use the engineer's estimate lose the contract.

Q. Why? A. The engineer's estimate is usually high, and should be so, for the information of the company that they work for.

Q. Would that be authentic information if they were as high as that? A. The engineer's estimates are only for the information of the company who furnishes the money.

Q. Doesn't your company want an authentic estimate? A. They want to get the cost as nearly as possible.

Q. Do you wish to go on the record that your company is satisfied with an estimate that is double the price that is actually paid? A. I cannot speak for the company.

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Examination by Chairman Thompson:

Q. In figuring out how much money you are going to put in an enterprise you want the estimate to be high? A. We always want to make them high.

Q. Why? A. Because — so the people who furnish the money when they get half way through won't find they haven't money enough.

Q. Are all estimates made that way by the B. R. T.? A. Frequently on many contracts we do not make engineer's estimates.

Q. I should think you would get discouraged after a while if they were all like this. What possible value was that estimate? A. I do not think engineer's estimates of signalling — there is so little basis for estimate and what is a fair cost of estimate they are of little value.

By Miss Loeb:

Q. If there had not been any competing companies, as the Federal Company, with your estimate being on file of $2,450,000, if the Salmon Company had bid, say two million dollars, and there had been no other side, you would have thought that a pretty fair estimate? A. They probably would have got the contract. I think the company owes it to the Federal Company.

Examination by Chairman Thompson:

Q. But you did not recognize it in any substantial way when the contract was awarded. You spent a lot of time in consulting with Salmon, consulting with Howe and the rest of them and with Colonel Williams and all of you, to find out some way to see that the Federal Company did not get it? A. I did not. We discussed it with all of them.

Q. How many times did you see Mr. Howe? A. I think three or four times.

Q. How many times did you see Mr. Salmon? A. About the same number.

Q. How many times did you see other people connected with that? A. I think about the same number.

Q. How many times did you see the Federal Company? A. Three times I know of.

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Q. Who did you see? A. Renshaw and Cade.

Q. Always together? A. Not always together.

Q. Can you remember the conversation you had with them? A. Not in detail.

Q. Can you remember it in substance? A. They submitted—

Q. Tell what they said? A. I cannot tell you what they said.

Q. But they submitted a price? A. They did not submit prices to me. They submitted a price to Colonel Williams.

Q. They did not submit that until you told them of the details that the General proposed? A. I did not tell them of the details. I told them that the General had proposed a speed control system which we were seriously considering.

Q. Now as a matter of fact you never had up to that time purchased anything except from the Union and General? A. At that time we had a contract with the Federal — Center street loop.

Q. Up to the Center street loop you never had furnished anything or bought anything except of the Union and General? A. As far as I was concerned those were the only signals I had any relations with.

Q. And if it had not been for the unfortunate quarrel on the Union you probably would not have dealt with the Federal on the Center street loop? A. I don't know that that had anything to do.

Q. It was the general intention in the General and Union to keep all this business? A. I don't know.

Q. Didn't you see general evidence that the Union did not, and the General did not want any outsider in? A. The discussions before the Public Service Commission with respect to the Center street loop brought that out. Before that I did not know that.

Q. You did not know that? A. No, I did not.

Q. Didn't the discrepancy of $450,000 between the bid of the General and the bid of the Federal tell you anything? A. No.

Q. Weren't you startled at the discrepancy between the bids of the General and Federal of more than fifty thousand dollars? A. I thought it was an abnormal difference.

Q. And it was a surprise to you? A. I was surprised we got such low bids.

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Q. And it surprised the General? A. I cannot speak for them.

Q. Surprised everybody in the signal business, they walked in with that low bid? A. I don't know.

Q. Whereupon they started about to find some means that they did not get it? A. I don't know.

Q. And get in the field? A. I don't know what their motive was. I know the result was very satisfactory to us.

Q. Why was it satisfactory? A. On account of the low price.

Q. Now this work to be done will carry with it a whole lot of extras before it gets through? A. Nothing I can think of. Nothing has developed so far that indicates there will be more than nominal extras.

Q. What do you mean by nominal? A. Poles that carry support.

Q. You have already paid them, haven't you, over ten thousand dollars for extras? A. No, sir.

Q. Haven't you paid the General Railway Signal Company over ten thousand dollars for work not included in this contract this year? A. No, sir; we have not. I think I know what you have in mind. We made a supplemental contract with them in order to get signals ready for the opening of the Fourth avenue subway which they claimed under their contract they did not have to provide within that time. Our claim was that they were.

Q. Well, you paid them? A. No, sir, we have not paid them anything. The contract is they are to do the work and the cost is not to exceed ten thousand dollars, and the cost to be determined by arbitration whether they are entitled to it.

Q. But they will get ten thousand dollars if they are right? A. I do not think they will get anything.

Q. But there is always a chance for extras and other work outside? A. So far as we have gone there seems to be very little chance for extras.

Q. You have not gone very far? A. We have got part of the thing started.

Q. So you do not know anything, then, of the fact that the Union and the General were together working under a contract, ostensibly a patent, 75 and 25, and had worked together for years?

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A. I don't know anything except what this investigation has brought out.

Q. And that they were in consternation when they saw the Federal come in and underbid them in these matters? A. I don't know how they felt about it.

Q. You knew Colonel Prout? A. Yes, sir.

Q. How long had you known him? A. I think I met Colonel Prout ten years ago. I don't know him very well. I have not met him over three or four times.

Q. You say that you did not know anything about the patent arrangement that they had? A. Yes, sir.

Q. Did you ever talk with Colonel Prout about the Simmen patent? A. No, sir.

Q. Did you know Colonel Prout had turned that down three times? A. No, sir.

Q. Did you ever hear it had been submitted to the Union Railway Signal Company by Simmen? A. I think one of their representatives, when they knew we were considering, told us they had considered that.

Q. And turned it down? A. Yes, sir.

Q. So you knew they had turned it down? A. Yes — in that conversation I remember that.

Q. So you did not know that there was any arrangement between these companies for the purpose of stopping competition as between them? A. I naturally would not know that. I do not have anything to do with letting the contract or making the financial arrangements for the company.

Q. Now, this Simmen patent was several years old when it came to you? A. I don't know that.

Q. Didn't you look into that at all, Mr. Menden? A. I did not look into that phase of it. We were only interested in seeing that this contract for the cab signal system was to be provided, that we were amply protected, and in any event we were to get for the price named the article originally specified, and to get something.

Q. You did not want to install until you got what is regarded as a perfect speed control? A. We knew if we did not get some-

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thing like that, we would have to install something of our own, on account of the heavy grade.

Q. Do you mean to say the B. R. T. were to install a system of its own? A. We were required to install something, and if we could not get anything better than that, we proposed installing — on the Williamsburg bridge — it is an automatic speed within certain zones where we put an instrument at the top of the grade — cut the instrument in. While the car is going down that grade, it would be under control so the car could not exceed a certain maximum speed.

Q. That is not an automatic speed control? A. That is as near as we could get.

Q. That is all you wanted was something that would control speed on cars? A. That is all that was provided for by the Public Service Commission.

Q. You do not want us to think that is what you mean by automatic speed control? A. That was the best we could get at that time.

Q. And the best you can get yet? A. I think what the General Company has is better.

Q. What have they got that is better? A. I have not gone into the patents at all. We do not concern ourselves about patents.

Q. What do you concern yourselves about? A. The physical thing the company propose to put on our system.

Q. Have you got a writing to that effect? A. They have submitted their automatic detail plans.

Q. Have you got a complete detailed plan now that is accepted? A. We have details of each part that we need to put into operation this system at the present time, so that the speed control they finally propose can be carried out on the tracks in operation.

Q. Have you got a speed control they propose to install? A. We have one car.

Q. Complete? A. They are making some modifications in it.

Q. Have you tested it? A. We have tested what they have completed.

Q. Testing parts of it? A. Testing different things.

Q. Now, they have not got it yet? A. I think they have.

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Q. You think they have? And that is as far as you go, and you want our record to contain as a fact that you have got it when you are only willing to come here and help them all you can by saying that you think so, isn't that a fact? A. I have no particular reason for helping the General Railway Signal Company.

Q. Then why did you spend so much time to bring them down from the high bid to the low bid? A. They spent time with us.

Q. When they came to you, did you have a stenographer in your office? A. No, sir.

Q. Wasn't any in there at all? A. No, sir.

Q. Did not keep one? A. I never do.

Q. And the office was closed, and the consultations you had were private? A. No, the office was open to the same extent it is always open.

Q. Whatever conversations you had were private? A. Simply in a room there. There were present only those concerned.

Q. Now what do you know about the Simmen patent? A. Well, very little.

Q. Did you ever know anything about it at all? A. No. You understand the patent is not the thing we are concerned in at all. It is the scheme we are interested in.

Q. You recommended the letting of the contract to the General Railway on account of the patent? A. No.

Q. Didn't you recommend that they do not submit new bids for the reason that the patent that the General Railway Company already had, had limited you to their market for the product? A. I made no reference to the additional bids.

Q. There was no remark as to additional bids? A. No, sir.

Q. Did you ever hear that the Federal Company only asked for an opportunity to submit new bids? Didn't you know the Federal Company asked the Public Service Commission for an opportunity for all hands to come in and bid new? A. I knew they did that before the Public Service Commission.

Q. And don't you know the reason that was given, because they were not allowed to do that was that the patents required it to go to the General anyway, and so was not any use for new bidding? A. I never heard that.

Q. You never heard that? A. No.

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Q. What patent did the Simmen Company or General Railway Company control in connection with this proposed system? A. I don't know. We do not in any of our contracts concern ourselves with what the contractor has in the way of patents.

Examination by Mr. Smith:

Q. I am not speaking about the contractor. I am speaking about your investigation. A. We did not go into the question of patents at all.

Q. You said the Federal Company created competition for your company? A. I think they were responsible for our having obtained a low figure.

Q. That was a competition after the figures, bids were opened, and not before? A. There was competition before and after.

Examination by Senator Lawson:

Q. What leads you to believe that this proposed system is going to turn out perfect, as you say? A. The theoretical operation of it is almost perfect, if it does that. If operated successfully it gives the motorman information in the cab as he is approaching a preceding train, and if he then has not reduced speed consistent with the distance between himself and the following train, he gets a signal. Another step after that — if he still fails to do, he gets an audible signal, and if he fails to obey that signal, automatically his brakes are applied.

Examination by Chairman Thompson:

Q. Well, that is not speed control? A. Whatever you call it. It is a speed control. It controls the speed of a train, but the motorman get his information through the cab signal instead of getting his information alongside the track.

Q. That is not what the other roads want? A. I don't know. That is what we want. If we get it we will have a very efficient signal system, because it prevents the stopping of a train when there is a long distance between itself and the preceding train. The train causes delay and produces track capacity If that train can proceed into a hazard zone and can proceed before it gets out of that zone, we have a very efficient system for our company. I do not know what the other companies need. It is very efficient for us.

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Examination by Senator Lawson:

Q. Then you base your entire statement to this Committee, that you think it is perfect because it is premature? A. I venture to say there is nothing perfect on earth.

Q. You have led me to believe here, it is your candid, honest opinion, as an engineer, that this so-called Simmen system is going to develop into just what your company is looking for, and I have asked you to give me your reason for it — what led you to give that impression? A. My reason for believing it will be successful is that in developing this system, I mean the General Company, they have encountered difficulties which at first seemed insurmountable, but in which case they have been able to devise some way of successfully meeting the local requirements.

Q. That is, they found these insurmountable things after you let them the contract? A. Yes, sir.

Q. So it is not a very theoretical, and practicable perfect thing, then? A. There are certain combinations of operation you must guard against. In developing these new, untried details, they found that was not true. In submitting them to us, we criticize that part of their detail and they take that back and revise it.

Q. So you are along in the experimental stage now? A. I think we are out of the experimental stage.

Q. You thought that a year ago? A. No, sir; I did not.

Q. You know Mr. Wilder, the chief engineer of the Public Service Commission? A. Yes, sir.

Q. You have pretty good regard for his efficiency as an engineer? A. Yes, sir.

Q. Well, did you know that he testified on this very subject before our Committee? A. I knew that he had.

Q. Do you know what the gist of his testimony was? A. No, I do not.

Q. He testified here, as I recall it — it is a matter of record — that as far as his judgment went, the matter was a failure, was not going to succeed. A. I do not think he was as familiar with it as we are. He has not very much knowledge of just what is being done.

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Examination by Chairman Thompson:

Q. There don't anybody know whether it is a failure or not yet?

Examination by Senator Lawson:

Q. Here we have an expert employed by the Public Service Commission, who is presumed to have just as good knowledge as you have, and supervision of these experiments, as a state body. I want your opinion as against his. You say you think this is a perfect — A. I did not say perfect. I said I think it is going to be successful.

Q. Mr. Wilder says there is merely — only being experimented with, and he does not think it amounts to anything. A. I think in a couple of months —

Examination by Chairman Thompson:

Q. It will be disposed of definitely after this Committee adjourns, you think — you will get that fixed up all right? A. I don't know.

Examination by Senator Lawson:

Q. What do you think of Mr. Wilder? A. In my talks with Mr. Wilder he has failed to take it the same way as I do. When he has said it is a failure, he is correct in stating that they have not as yet tangible evidence that the thing will be successful, but from the way we have followed it in detail, we think it will be.

Q. I should correct that and say it was not very much of a success — he did not say it was a failure. A. He may be justified from his point of view. I do not think he has ever seen the apparatus.

Senator Lawson.— I simply wanted to get your opinion for the benefit of the record.

Examination by Chairman Thompson:

Q. So all you have got up to date is you are experimenting with speed control? A. Under their contract they have eighteen months in which to do that. In other words, they are complying with their contract.

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Q. You think they will dispose of it definitely within six months? A. I think six months from now. The contract is a year old.

Q. But you could have gone on and taken anybody's patent and improved it, and gone on and got something after a while? A. We could have tried it. This is the only company that was willing.

Examination by Senator Lawson:

Q. The Federal Company was willing to go ahead? A. They were willing to try speed control, but did not want to change their price.

Q. Why not give them an opportunity? A. That was offered to them at the time. They had an opportunity to do that. They did submit something in detail. Our preference was for the proposition by the General Company. I think if they had changed their price, they would have gotten the contract.

Chairman Thompson.— We will suspend now until 11 o'clock tomorrow morning.

As to Miss Loeb asking questions, I wish to state that she has investigated this particular matter, and that is the reason why she was permitted to ask the particular question. That is for the information of counsel.

Whereupon, the Committee adjourned to meet December 30, 1915, at 11 A. M., at the same place.

DECEMBER 30, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,

165 Broadway, New York City

The Committee was called to order, pursuant to adjournment, at 11:30 o'clock A. M., Senator Lawson presiding.

Senator Lawson.— I will call the meeting to order, and we will take a brief recess pending the arrival of the Chairman. The witnesses under subpoena will remain until further directed by the Chair.

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AFTER RECESS

Senator Lawson.— The meeting will come to order, and Mr. Salmon will please take the chair.

WILMER W. SALMON, recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Salmon, I have been advised that you are prepared to waive immunity? A. Yes, sir, certainly.

Q. There is a blank for the purpose.

(Mr. Lewis hands blank to witness.)

Witness signs waiver, which is made a part of the record, and is as follows:

"I, W. W. Salmon, residing in Rochester, N. Y., presenting myself as a witness before the Joint Committee of the Senate and Assembly of the State of New York, duly appointed for the purpose of conducting an investigation of the administration of the Public Service Commissions Law, hereby specifically waive any and all immunity from indictment and prosecution, to which I may be entitled by reason of any provision of any law of the State of New York on account of any testimony that I may now or hereafter give in relation to the subject matter of such investigation or otherwise, and consent that the testimony so given by me may be used independent of and free from any and all claims to immunity to which I might otherwise in any event be entitled.

"W. W. Salmon.

"Dated this 30th day of December, 1915.

"Witness, G. W. Munson."

Q. I understand that you are desirous of an opportunity to give your recollection and version of the history of the award to your company of the contract for the installation of the signal system on the Broadway-Fourth avenue line? A. Very happy to furnish the Committee with any information that I can.

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Q. I think it is the desire of the Committee that you make your statement as you choose to make it; to that end you may start where you like to start and continue uninterruptedly, and state what you have to state in connection with your knowledge of the situation, and after you have completed any statement that you desire to make, the Committee may have some questions to ask, but in the meantime you may go ahead and tell the Committee whatever you have in your mind in connection with this subject, in order that the record may contain a complete statement of what you think of the history of the transaction. A. Where would you like me to start?

Q. Wherever you see fit. A. I may start perhaps a little late in the matter, starting with the time we received requests for proposals.

Q. Let me interrupt to this extent; I understand that you have expressed a desire to give your recollection of the circumstances of the employment of Mr. Johnson; would it be agreeable to you to start with that? A. Yes, sir, I am perfectly willing to do that.

Q. If you like to, start with that. A. I understand the date as July 15, 1914, I understand that is the date Mr. Johnson resigned from the Union Company, and shortly after that Mr. Johnson sought to make an appointment with me, stating he was out of a position. An appointment was made, and some time toward the latter part of July, as I recall it, he came to Rochester and said he was out of a position, and that the signal business was the only business he had ever been engaged in, and he desired to form a connection with some signal company, and that he had first come to us, so I believe at that time —

Chairman Thompson presiding.

Witness (continuing).— I think it was at that time he stated that some negotiations had been started with respect to his taking the presidency of the Hall Signal Company.

Chairman Thompson.— I cannot allow any reports to be taken by anyone except the official stenographer, and if I notice any taking them, I shall ask them to retire from the room or else not take them.

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Witness (continuing).—I told Mr. Johnson that having known him and of his work for a great many years, I thought it was entirely possible that we might make some proposition to him. He then said that before we made any proposition, he thought it was only proper that I should have information to the effect that he had not left the Union Company voluntarily, and further that I should have information as to the reasons for his leaving as he understood them. I told him I should be glad to have that information, whereupon, he stated in substance that having been summoned to the main offices of the Union Company in connection with some special meeting of the board, he was asked to go into this meeting after it had been a considerable time in progress, and that he was then asked by some member of the board or some person present, I am not clear whether a member of the board, whether he had disbursed any moneys handed him by his superior officer to influence the placing of railway orders, and I believe Mr. Johnson stated that he admitted that he had. Demand was then made upon him, according to his story to me, that he communicate the names of the people and the times and places. Mr. Johnson said that the disbursements made by him had been made at the time and in the manner and to the people whom he had been instructed to give it to by his superior officer, and that that officer being present, he must decline, except at his superior officer's request, to give the people there any information. If his superior officer desired that he should make the statement at that time, he was perfectly willing to do it, and this led to some wrangling and a pretty heated dispute, and that finally he was accused of gross insubordination and his resignation demanded because of insubordination. Mr. Johnson supplemented that story with a statement in a subsequent interview he had with his superior officer, this officer had expressed to him the attitude that the whole thing was, as he characterized it, a frame-up, that this man's position was desired by some one present.

Q. Which man's position? A. The position of president of the company occupied at that time, I understand, by Colonel Prout, was desired by some of the men present, and that, Mr. Johnson stated, he himself was personally in possession of knowledge that one or more of the men present at that very meeting

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who claimed they had not been acquainted with the policies of that company extending over a period of a long number of years, were, as a matter of fact, acquainted with that policy because he himself had talked it over with them, and that Colonel Prout, when demand had been made upon him as to what disbursements he had made of the character indicated, had protested that his board had been for years familiar with that policy of the company, and he could not understand why the question had been asked. No mention was made by Mr. Johnson to me of his resignation having been demanded on account of any alleged improper relations with any public officer. As I had myself felt for a good many years the practices indicated by Mr. Johnson have been practices that were the policy of that company, and had been in existence for many years prior to Mr. Johnson's connection with it, I was quite prepared to believe that even the board of directors of that company might have known of them, and they were rather broadly suspected by a great many other people throughout the country, and I was rather inclined to believe Mr. Johnson's story. I asked Mr. Johnson the question whether or not he had ever himself sought to corrupt any man to improperly influence the procuring of business, and Mr. Johnson assured me he had never in his life sought to do any such thing, and as a good soldier, he had carried reports when they made it evident to him they wished to have their votes influenced, he had carried that to the superior officers and acted on the superior officers' orders, and he stated the thing was repugnant to him, and he hoped he would not be required to do that if he entered our employ, and he was told the General Company would not require, expect or permit any such action on the part of any of its employees, he or another. Subsequently, I think on the 27th day of July, at a meeting of our board of directors, our company's board of directors, I was authorized to engage Mr. Johnson, and he was engaged and was elected a vice-president of our company, and not attached. At that time and for a long time subsequently, there had been no determination reached as to just what position we should actually give Mr. Johnson in our employ. Subsequent to that — by the way, Mr. Johnson was given, at his request, a month's leave of absence, with

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instructions that on his return, he seemed to be quite shot to pieces by his experience, and he felt he had been unjustly treated, or said he felt so, and he asked to have a month's leave of absence, and it was granted with instructions that on his return he should familiarize himself thoroughly with our devices and systems, so he would know what it was we were offering. While in a general way he doubtless had that information, in detail he did not have it, and it was expected he might be required to devote a good deal of time to getting this information. Subsequent to his employment, I think about the middle of August, I had a meeting with the then president or acting president of the Union Switch and Signal Company, at the Vanderbilt.

Q. Mr. Uptegraff? A. Yes, sir, Mr. Uptegraff. At that meeting I was introduced to a gentleman by the name of Levinson, who made the statement that he had heard with a great deal of amazement we had employed Mr. Johnson, and he could hardly conceive, had we known the facts as to the cause for his retirement from the Union Company, we would have employed him, but he stated he had been told that Mr. Johnson had fully acquainted me with all the facts leading to his retirement, and asked me if that was so, and I replied that as apparently he knew all the facts, and as I certainly could not know them unless given me by some one that knew them all, I asked him to tell me what they were, and if so, I would perhaps advise him whether I had been told by Johnson. Mr. Levinson said in substance, "Did Johnson tell you that he had instituted when he came to be connected with the sales department of the Union Company a campaign of graft for influencing the getting of railway orders?" I said, "No, he didn't, and if he had I would not have believed it, for the reason that it has been a matter of belief on my part that for many years prior to Mr. Johnson's connection, or Colonel Prout's connection with that company, that same campaign of graft was carried out by your company," and he denied that and said it wasn't so, and then he asked the question, "Did he tell you that he had sought to corrupt a public officer," and I said, "No, he didn't, and I wouldn't believe it except from his statement to me, and knowing

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take any such thing." Levinson stated that Johnson had sought to corrupt a public officer and had himself admitted he had attempted to corrupt such officer, and I stated again I didn't believe it, and I will state now that I don't believe it.

Chairman Thompson.— You don't mean you don't believe Johnson's story he testified to before the Committee?

Mr. Salmon.— I don't believe Mr. Johnson sought to corrupt.

Witness (continuing).— I will complete, if I may. I will complete this one thing. Subsequently I stated to Mr. Johnson that Mr. Levinson had made the statement to me that Johnson had been fired, or resignation demanded, on account of an attempt on his part to corrupt a public officer, and what Johnson said wouldn't look well on the record, but I will say he denied it very strenuously. Going back to Mr. Levinson, Mr. Levinson then said, "This man that you have employed is a dangerous man. We feel very keenly that you had no business to employ him, and we are very curious to know whether you propose to employ him to obtain business on the basis which it is alleged by our people he had obtained business for the Union Company on." I stated to Mr. Levinson that I could not quite follow him in any idea that he might seem to entertain to the effect that immediately or concurrently with their sudden excess of virtue, we should suddenly become blackguards, and Mr. Levinson reminded me that we need not feel Puritanical, and I reminded him I would rather be Puritanical than Pharisaical. We had quite a heated interview, after which Mr. Levinson pointed out the situation in which the board of directors of the Union Switch and Signal Company would have been placed had that company actually paid money to a public officer, and had that payment been discovered in connection with an investigation that was then being made of the accounts of the Union Switch and Signal Company by certain government agents, after which I thought I understood the sudden access of virtue of the Union directors. It was an access of cold feet and not of virtue. Mr. Levinson stated on the stand that at that time I told him we had employed Mr. Johnson to take charge of our sales, and presumably carry on the practice he was alleged to have carried on for the Union Company. I wish to submit for the record

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the statement that at that time I had not determined what Mr. Johnson's connection with our company would be, or that he would have anything to do with the sales department, and he was not made sales manager of our company until the November following. In this connection, I want to state that a very great deal of pressure has been put on me to keep me from testifying to the truth of this matter; not by this Committee, but outside.

Q. Have you told us all that you care to tell us on the subject of the reason disclosed for the discharge of Mr. Johnson or his enforced resignation, and the conversation with Mr. Levinson? A. All I recall at the moment. This was a very long conversation and lasted from about nine or ten in the morning until after luncheon, and we had luncheon in the rooms of these gentlemen at the Vanderbilt. I have sought to condense the conversation that actually took three or four hours.

Chairman Thompson.— It is now 1 o'clock, and we will take a recess, and you will be permitted to tell all you wish to after recess.

We will suspend now until 2:15 o'clock P. M.

Whereupon, at 1 o'clock P. M., a recess was taken to 2:15 o'clock P. M.

AFTER RECESS

Chairman Thompson.— The Committee will come to order. The Chair is going to take the advice which has been offered to him by Judge Cullen. He said that in a room like this we ought not to permit smoking. I am not going to permit anyone to smoke except counsel, and except by special permission.

Senator Lawson presiding.

Examination by Mr. Lewis resumed:

Q. Mr. Salmon, you may go along with your narrative. A. We were launching into the New York Municipal contract?

Q. Yes. A. We received formal invitation to tender early in August. The bids being called for submission in about one month

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Mr. Johnson, I don't believe he would be foolish enough to under- from the date of the receipt of the invitation to tender. We at that time, as for a long time previously, had been working in our own engineering department, upon the development of a speed control system, and I urged our people to use the greatest possible expedition in advancing their work on that problem, and some time before, I should say perhaps a couple of weeks before the time that bids were to be submitted, I made a strong effort to induce the railway people to defer the time of opening the bids. That was for two reasons: First, because the length of time for the preparation for such involved figures was too short; second, because we had some hope that a negotiation that we were engaged in, looking to the obtaining of certain speed control patents, might be concluded in time to admit of our making a proposal on speed control, provided we could get an extension of time up to the 1st day of October, and I believe the bids were called to be submitted on the 10th of September, 1914. We did obtain one week extension, but were unable to obtain any longer one. The bids were submitted, as I recall it, on the 17th day of September, 1914. Two days before that date I was advised by counsel that he had obtained an agreement, an option upon the Simmen speed control inventions or patents. The time, of course, was entirely too short for us to prepare any proposal on that scheme, but on the 17th following the opening of the bids, and in the presence of the representatives of all of the bidders, I made formal request that we be permitted to submit a proposition upon a speed control scheme. There seemed to be some indication on the part of the railway people at first that we were merely seeking to have an opportunity to cut our price, we not being low bidders on the specifications that the railway company had submitted. On the following day I met the chief engineer of the New York Municipal Railways, and with our chief engineer, and our chief engineer fully explained to the chief engineer of the railway what it was that we had it in mind to offer. After going over the matter with Mr. Menden, I believe he requested our chief engineer to go over the matter with their signal engineer. That was done, and we were advised that if we would very promptly submit a proposal based on the improved scheme, which we had explained,

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that proposal would be entertained. As I recall it, it was late in the month of September before we were able to submit this proposal on the new scheme. Our chief engineer, Mr. Howe, and myself, and some of our other people, had cancelled all engagements that we had and stuck to the work unceasingly, until toward the latter part of September we were able to submit a proposal which substantially is covered by the agreement as it now exists between the New York Municipal Railway and ourselves. The figures which we submitted were arrived at by taking our original bid on the specifications of the railway company and deducting from that amount the amount obtained by taking the number of units of various sorts which would not be required in the new speed control system, multiplying the number of units by the price quoted by us in our September 17th proposal, and this amount, so derived, deducted from the amount of our original bid, gave us the exact amount of our final bid, our bid on the new scheme. I believe it was toward the latter part of October, after we had had many meetings, our engineer and myself, with the officers of the New York Municipal Railway Company, and with the engineers, signal engineers, and consulting engineers of that company, and with the consulting engineers and engineers of the Public Service Commission, and gone fully over it, it was, I think, in the latter part of October that the railway company advised us that they had asked the Public Service Commission to approve their award to us for the contract of this new speed control scheme. We were still subject to the call of the officers and engineers of the railway company and the engineers and consulting engineers of the Commission, but had nothing definite on the matter until I think about the middle of November, when I was requested to attend the meeting in the offices of the Public Service Commission, a public hearing. At that hearing there was read a letter of protest from one of our competitors against the award of this contract to us, and I believe counsel for one of the other competitors made a similar complaint, it being stated that we had been permitted to cut our price. Well, there was a rather desultory discussion of the matter, as I viewed it, and I didn't feel that we had had a complete thorough hearing on the matter, or

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that our position on the thing was understood. Subsequently, and I think it was toward the end of November, perhaps a couple of weeks after the time of this public hearing, I was asked to meet Chairman McCall and certain of the Commission engineers with our engineer to explain exactly how we had arrived at the new figures. We had such a meeting and the explanations were given, and so far as I could judge, the Chairman and other Commissioners who were present, seemed to understand the basis on which our figures had been derived, and after that meeting I think that, as I recall it now, the day following my meeting of these gentlemen, there was a public hearing again, when the matter was all thrashed out and gone over fresh, and as I recall it now, nothing further came up with the Commission or with the railroad company until we were notified of the award of the contract to us. I do not know whether that is sufficiently connected for details, but in the main I will say that we had probably all together, our chief engineer and myself, probably had twenty or thirty conferences extending over a period from September 7th to — well, for three months, October, November and December, with everybody that we were directed or requested by the railway officers to see and explain things to.

Q. Have you completed the statement now that you desired to make A. I am making the statement as I understand the Committee wish me to.

Q. Do you want to make any statement in reference to your acquisition of the so-called Simmen patent A. I will say this, Senator, that the engineers of my company had felt for a long time, as I had felt, that we should develop or procure what we had come to know as a speed control system. I think as early as 1912 we started on that work. As I recall it, early in 1913 we had some negotiations with Mr. Simmen. We were not, however, at that time, quite sure in our own minds just what we needed in order to be able to operate a highly successful speed control scheme. By the time, however, that we received the invitation to tender on this New York Municipal Fourth avenue work, I had been advised by our chief engineer who had made a very complete study of the subject, that he had not been able to

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develop what he would regard as the highest type and most successful type for speed control, without employing certain elements claimed in the Simmen patent. I thereupon took that matter up with our counsel, and our resident patent solicitor, and asked whether or not in his opinion we could safely employ the principle embodied in the Simmen patent and employ it without license and with safety, and I was advised by counsel that we could not employ it without license and with safety. Having convinced myself that the ideas of our chief engineer and of our counsel were ideas I should regard, I instructed Mr. Dodge, our resident patent solicitor, to again take up and very earnestly take up the getting of some agreement with Simmen by which we might be permitted to use the patented scheme. Mr. Dodge immediately took up the matter and it was probably, I should imagine, two or three weeks, and perhaps four weeks after that date, when I was advised by him that he had entered into a tentative agreement under which we had an option to take over these Simmen speed control rights, and acquire a license under them. Concurrently with that, we were looking into other speed control schemes at or about the same time we acquired an option on what is known as the Thullen scheme. We paid, I think, perhaps five hundred dollars, for an option extending over a week or two weeks during which we could make an examination. Our engineers and counsel advised, after examination on that matter, that it was not suited to our purpose, and we had some others, either coincidently or previously to that time, but I don't remember the names of all the people, and amongst others the Ford patents had been brought to our attention and were examined by our people and our chief counsel, Mr. Edwards, talked that over. In short, we were very greatly interested in this speed control matter, knowing if we could develop a successful system it would mean a very great deal in the relief of this congested condition of New York subways, and we were prepared to spend a considerable sum of money to obtain patent rights which we thought might protect us in the work we were about to engage in.

Q. Did you acquire the Ford patents? A. We, I don't think, had acquired — I don't think we have ownership. Our counsel,

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Mr. Edwards, is present, and my recollection is that we acquired a license under the Ford patents, as we did under the Simmen's. I don't think we acquired the Simmen's, although I have not read the agreement recently. The counsel who assisted in drawing the agreements are here.

Q. Is there anything else you desire to have put upon the record? A. I do not recall anything, Mr. Lewis.

Mr. Lewis.— Is there anything you desire to have asked of the witness, Commissioner Willcox?

Mr. Willcox.— I had thought possibly at this time you would want the story of the negotiations for the Simmen patent, and also for the Ford patents. Those have been mentioned publicly, and I thought perhaps if Mr. Salmon could give way and let Mr. Dodge give the account of that negotiation and then recall Mr. Salmon, there are certain questions I would like to have asked him at the close of his examination.

Mr. Lewis.— Is that agreeable, Senator Lawson?

Senator Lawson.— I think so, yes, sir.

Mr. Lewis.— Before we do that, we had better confer with Chairman Thompson as to his wishes in the matter.

Senator Lawson.— Perhaps that course would be better. We will take a brief recess for that purpose.

AFTER RECESS

Chairman Thompson presiding.

JOHN T. CADE, being recalled for further examination, testified as follows:

Chairman Thompson.— Have you still the same ideas you had about immunity the other day?

Mr. Cade.— Yes, sir. Those are fixed.

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Chairman Thompson.— Mr. Cade thinks a man who waives immunity is a coward, and he won't do that.

By Mr. Lewis:

Q. How long have you been connected with the Federal Company, Mr. Cade? A. Since its organization which I think is somewhere around eight or ten years.

Q. What was your business before that time? A. Signal engineering.

Q. With what company? A. With the Standard Signal Company; Standard Railway Signal Company.

Q. Located where? A. At Green Island.

Q. And that is near Albany? A. Yes, sir.

Q. That was an Albany company? A. It was an Albany Company.

Q. Is that company still in existence? A. No, sir.

Q. What became of it? A. It merged with the Pneumatic Signal Company, and they in turn merged with the Taylor Signal Company, and formed what is now known as the General Railway Signal Company.

Q. You were never employed by the General Railway Signal Company? A. I was employed by them for possibly a few months after the merger, and might have been nearly a year, and then left their service and was one of the incorporators of the present Federal Signal Company.

Q. Can you tell us when that company was incorporated? A. No, sir, I cannot, but I should say it is ten years ago.

Q. What is your official connection with that company? A. With the Federal Signal Company?

Q. Yes. A. Do you mean my title or duties?

Q. What title? A. Vice-president.

Q. What are your specific duties, Mr. Cade? A. I am in charge of the sales department.

Q. And have been since its organization? A. During the first few years of its organization I was the president of the company. Then we were wiped out by a fire and got into financial difficulties, when Mr. Renshaw came in and took active part in the management of the company and assigned to me the duties of the sales.

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Q. Your duties as a selling agent I assume were the usual duties, calling upon prospective customers and negotiating for contracts? A. Yes, sir.

Q. And examining specifications and so forth? A. Yes, sir.

Q. Was there a time when you were asked to bid upon the so-called Center street loop contract in New York? A. Yes, sir, I think we solicited the opportunity to bid upon the original Center street loop.

Q. That was the smallest of the various contracts that was under consideration? A. Yes, sir.

Q. When was that? A. As near as I can recollect, it must have been between three and four years ago.

Q. Did you bid upon that contract? A. Yes, sir. We put in a proposition on it.

Chairman Thompson.— You say you solicited the opportunity

Mr. Cade.— Yes, sir.

Chairman Thompson.— What do you mean by that?

Mr. Cade.— We heard there was work to be done on that and I called on the various officers of the Brooklyn Rapid Transit road. I call it the Brooklyn Rapid Transit, for convenience. It is really the New York Municipal Railway, and asked that they give us the privilege of competing for the work.

Chairman Thompson.— Who did you see?

Mr. Cade.— I saw Mr. Johnson, the signal engineer, and Mr. Menden.

Q. Did you submit a bid for that work? A. Yes, sir.

Q. And you were not successful? A. No, sir.

Q. What company obtained that contract? A. My information is the General Railway Signal Company obtained it.

Q. Subsequently were you asked to bid on the Center street loop contract that was awarded in July, 1914? A. Yes, sir.

Q. Tell us about that? A. I cannot tell you very much about that, because about at that time — excepting, that I collaborated with Mr. Renshaw. About that time we had a very great deal of work in other parts of the country, and by agreement with Mr.

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Renshaw and I he took hold of the active part in the trying to obtain the contracts in this vicinity, particularly that work, because he was located here, and it would require a very great deal of time or might require time and for some one to be always on the spot, and by agreement with him released me of that, and I know this, that I collaborated with him to the extent of going over the estimate sent by our engineers and giving my opinion as to what percentage of profit based on my knowledge of gains and losses in other parts of the country in competition with the other signal companies would be likely to prevail, and on that bids were submitted, and we were the low bidder, and the contract was awarded to us.

Q. Did you attend the meeting at which the bids were submitted? A. Those bids were submitted — I may have — it may have been I personally took them over. I wouldn't say that, but there was no public opening of those bids. They were submitted to the engineers of the New York Municipal Company and they retained the bids and advised us later that we were the low bidders. I don't think they ever advised us as to what the bids of the other companies were.

Q. Wasn't there an occasion when you were advised of the fact that your right to manufacture and install the apparatus was questioned? A. Yes, sir. At the time of the New York Municipal Railways Company — this is to the best of my knowledge and belief, and I want you to bear in mind that I am very desirous of giving you information, but it may be possibly slightly incorrect, because, as I stated before, Mr. Renshaw had this matter in hand. It was only by information and talks with him that I have the knowledge that I had, and we were advised that there was a question of our right to install that work under the specifications, and that our rights to install it were contested by the Union Switch and Signal Company, who were the patentees of certain devices that were necessary to use thereon.

Q. And were you advised also of the fact that the protest was to be heard at the hearing to be held by Commissioner Wood? A. I don't think so, on the Center street loop contract.

Q. That is the hearing touching the question of your right to construct under your patents? A. That was continuously contested, if you please — I mean at that and at other places. It

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was brought to our attention by Mr. Menden, and the original inquiry of the Center street loop provided that a ten-thousand-dollar bond should be given for the faithful performance of the work and to guarantee the railroad company and city against — or those that were interested in it — against delays or annoyances by reason of the fact that it was alleged we were infringing patent rights, and at my suggestion we made the offer, we made the suggestion, that the ten thousand dollars was an exceedingly low figure, and we offered, and the offer was accepted, that the bond be increased to a hundred thousand dollars by us.

Q. What about the hearing; didn't you know of the fact a hearing was had? A. Yes, sir, there was a hearing had before the Commissioner.

Q. Did you attend it? A. I think I did.

Q. When was that hearing had? A. It was had some time between the submitting of the bids and the — probably a couple of months after our figures were submitted.

Q. That was held by Commissioner Wood? A. No, sir; it was held by the whole of the Commission. Commissioner McCall was chairman of the meeting, and most of the Commissioners were there, to the best of my recollection.

Q. Didn't Commissioner Wood conduct a hearing upon that subject?

Chairman Thompson.— Commissioner Wood had a hearing on the 2nd of July, and they all met on the 30th of July and awarded the contract.

Mr. Cade.— Yes, sir, I recollect now, Commissioner Wood did hold a public hearing in his office prior to that.

Q. At which the other Commissioners were not present? A. Yes, sir.

Q. You were there? A. Yes, sir, I was there, and Mr. Renshaw was there.

Q. You knew Wood? A. I hadn't met the gentleman, I think, before that.

Q. Ever met him before that time? A. I don't think I had ever met him before that time.

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Q. Introduced to him that day? A. No, sir.

Q. Just simply appeared? A. Yes, sir, as a spectator, because Mr. Renshaw was attending to the interests of the Federal Signal Company, and of course assisted by me in any way that I could assist him.

Q. Did you participate in the discussion? A. I don't think so.

Q. Have anything whatever to say on the subject? A. Only to sit there.

Q. And let Mr. Renshaw do all the talking? A. Yes, sir.

Q. You were not introduced to Wood at that time? A. I don't think so.

Q. Did you have any conversation with him? A. Not that I recollect.

Q. Speak to him at all? A. I may have said, "Good afternoon," or "Thank you for listening to us," or something like that.

Q. When was it that you went into his private office with him? A. My meeting with him in the private office was at a subsequent meeting after our bids had been submitted for the work on the contract on the Fourth avenue lines.

Q. Do you mean to say it was several months afterwards? A. Yes, sir, after we received the contract for the Center street loop. I never saw Mr. Wood on any occasion excepting at a hearing, at hearings, prior to the submission of figures for the Fourth avenue contract.

(The last answer was repeated by the stenographer for the benefit of counsel.)

A. I would like to correct that. Not at a hearing — I would like to say at hearings in Commission.

Q. When did you get request for the submission of bids on the Fourth avenue system? A. Oh, I think it was some time in July or August, or the early part of September, 1914.

Q. That was after the award to your company of the Center street loop contract? A. Yes, sir.

Q. In the meantime you had become acquainted with Mr. Wood? A. No.

Q. Not at all? A. No.

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Q. Met him at all or had any communication with him? A. Never met or had any communication with him at all.

Q. Who prepared the bids on the Fourth avenue proposition? A. The estimate was sent down to the New York office and Mr. Renshaw and I went over them together in his office, and guessed at what figures would be likely to be low. Added certain profit.

Q. Well, you figured out what it was going to cost you, I assume, to install? A. Yes. The estimated cost came down from our engineer or estimating department at Albany to us.

Q. Were you present when those bids were opened? A. Yes, sir.

By Chairman Thompson:

Q. What was the date of the opening of those bids, do you know? A. No. I ought to know, because it was a memorable day.

Mr. Lewis.— September 17, I think.

Examination resumed by Mr. Lewis:

Q. Why a memorable day? A. Because we thought we got the order.

Q. That made a great impression? A. A very great impression.

Q. But not sufficient to enable you to remember the date? A. Well, I thought of everything else, quite exultant of the fact that we were low.

Q. Did you see Commissioner Wood that day? A. No, sir.

Q. Did not see him? A. No, sir.

Q. When did you first see him after the submission of those bids? A. It may have been three weeks.

Q. Whereabouts? A. At a meeting of the Commission in New York.

Q. What was the occasion of that meeting? A. It was an occasion where Mr. Renshaw in charge and I as his assistant went to protest against the introduction of what we believed was foreign matter, that was likely to prevent our getting the contract, to which we believed we were legitimately entitled.

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Q. That was a proposed cab signal system, do you refer to? A. No, sir. It was the fact to try to enforce on the minds of the Commissioners the fact that being the low bidder and in fair competition, that we were entitled to the work and that no other company had the right to introduce foreign matter that might, and did, in our opinion, give them an opportunity to revise their figures so that they might be low.

Q. Well, that foreign matter that you speak of was the speed control? A. The speed control, yes.

Q. With whom did you talk at that time? A. I believe all of the Commissioners were there, and we all talked together part of the time.

Q. Did you have a personal conversation with any of them? A. No, sir.

Q. Merely a public hearing and all that was said was said publicly? A. Yes, sir.

Q. After the hearing, did you have any conversation with any of the Commissioners? A. Yes, sir.

Q. With whom? A. With Commissioner Wood.

Q. Whereabouts did that take place? A. In his office.

Q. And will you tell us what was said?

Chairman Thompson.— How did you happen to get in there in the first place?

Mr. Cade.— I don't know whether the Commissioner and I walked out of the committee room together, or whether I was outside and he came out and I saw him as I might possibly see one of you gentlemen on the outside here. Anyway, as I remember it, he said, "Come along into my office, I would like to have a few words with you." And I went into his office and sat down and I said, "Well, what is it?"

Chairman Thompson.— What did you do when you got in there? Did you shut the door?

Mr. Cade.— Yes.

Chairman Thompson.— Anybody else in there?

Mr. Cade.— Not that I can recollect.

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Chairman Thompson.— Go to it and tell us what was said.

Mr. Cade.— He said — this is the best of my recollection, of course. He said, "Now, this is quite an important contract that is going to be let and the Commissioners have to look into the matter very carefully before they give their approval to the award of a contract of this sort. It is their duty first, as you understand, Mr. Cade, to see that the people of the city are properly served, and we have got to be very careful that we do not approve the awarding of a contract to anyone, the result of which might cause annoyances and delays to the traveling public here." Now, I said, "Well,—"

Senator Lawson.— He made that long speech to you, did he?

Mr. Cade.— Yes, sir.

Senator Lawson.— Go ahead and tell what followed the long speech.

Mr. Cade.— He said, "There are two things against your company getting this contract."

Examination by Mr. Lewis:

Q. You will have to talk to the stenographer, because he has got to get the record. A. I was hoping it would not be a matter of record.

Q. Why did you hope that? A. I am at a loss for words to explain exactly why I did hope it, but I hoped it.

Q. Do you find it painful? A. Not now.

Q. Well, was it at the time painful? A. The record or the —

Q. The situation with Mr. Wood in his private office with the door closed. A. No, I felt complimented. And then I was still under the influence of the certainty of being low, we would get the contract. I think I walked in a dream in those days, because it was a most important thing for us. Then he said, "There are two great objections, it seems to me, to the awarding of this contract to your company." Then I said, "What are they?" "First," he said, "the patent situation; the other companies — that is to say, the other companies that are next to you in figures have an unquestioned right to install this work. Your right to

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install it is contested, and there might be an injunction gotten against you that will prevent the completion of this work which would be a serious injury to the people of the city. What have you got to say against that?" I said, "The only thing I can say, Commissioner, is that we have a contract for the work on the Center street loop; we have installed on other roads, the Pennsylvania Railroad, similar devices, and there have been no efforts made on the part of the patentee to obtain an injunction against us. We stand prepared to put up five hundred thousand dollars to compensate the owners of the patent, should it be found that we are wrong and they are right, and if they are damaged, and I do not believe that there is any court in the United States that will inconvenience the people of New York city by stopping us from doing the work, when there is all that money laying there to compensate the damaged person. And that seems to me as good a guarantee as anyone can possibly give. Five hundred thousand dollars will lie there and indemnify the people that might be injured by our doing this work." He says, "You could not guarantee that no judge would grant an injunction." I said, "No, I certainly could not. I could not tell what a judge would do, but we are doing everything we can to insure the Brooklyn Rapid Transit and every other person interested shall be safeguarded and protected." He said, "That, of course, is another matter." He said, "Even if an injunction was obtained against you, it would not allow the work to proceed." I said, "No, sir, it would not." He said, "Well, now, there is another quite serious thing — that is, you have never done any work of this sort of the size that it is." I said, "We are already doing the work on the Center street loop, and while that is not as large as this, it is quite as important, and it comprises in that section, all that is going to be required of us in carrying out this work. We have never failed, either in letter or spirit, to faithfully perform any contract that we entered into, and I can give you the name of the largest railroad in the United States that I believe would tell you that they would give us this contract if we were the low bidder, unhesitatingly they would give us the contract." He said, "Well, of course the Commission could not be relieved of responsibility by the influence of other railroads."

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Q. Are you telling us now what he said? A. Yes, sir.

Q. He said that? A. Yes, sir. He said, in effect, "We have to be guided by our own — what we believe is wise."

Q. What else did he say? A. Then we stopped, and then he said, "Have you any other reason to advance why the Commission should be favorably disposed toward your people?"

Q. That is what he called it, was it? A. Yes, to the best of my recollection.

Q. What did you understand by that? A. Well, I have been laboring under so many misunderstandings lately, Senator, I would like for you not to press that question.

Q. Well, you have some understanding of what that meant. A. I had a very strong impression that he was giving me an opening to see if I could use persuasive eloquence.

Q. What do you understand by the term "persuasive eloquence"? A. My understanding of the term "persuasive eloquence,"— this was only my impression.

Q. Yes — what was it? A. That had I said to him that I would have seen that some benefit might accrue to the Commission personally, that I would not have been kicked out of his office.

Q. To him personally? A. Yes, to him personally.

Q. Financial benefit? A. Yes, I had that impression.

Q. And did you relate that conversation to Mr. Renshaw a few minutes later? A. No, sir.

Q. When did you relate it? A. I related it three or four days later.

Q. And you told him in that conversation that Commissioner Wood had given you an opening to offer him money? A. Yes, sir.

Q. Just as Mr. Renshaw has testified to here? A. If you please, I would like to address you — you are a Senator?

Q. I used to be. A. I didn't know whether you were just simply an attorney.

Q. I am simply the attorney.

The Chairman.— There is a chance for us who are now Senators to become as good-looking as he is.

Mr. Cade.— When you do, you will be marked by the ladies.

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Mr. Lewis.— I have not found it so.

Mr. Cade.— Where were we at?

Q. You were going to tell us what you said to Mr. Renshaw. A. It was some days after that that I said to Mr. Renshaw — you asked me if that was in accordance with Mr. Renshaw's testimony. There is one part of his testimony, or alleged testimony, that I cannot quite subscribe to. It has been stated in the newspapers that Mr. Renshaw stated that I told him that Mr. Wood had said that he was open to an offer. That is not correct.

Chairman Thompson.— What did you tell him?

Mr. Cade.— I told him — Mr. Renshaw — I said, "Now, Mr. Renshaw, I think I ought to tell you — you are handling this matter"— this was after I saw Mr. Banks.

Chairman Thompson.— Didn't you say anything to Mr. Renshaw after you saw Wood and before you saw Banks?

Mr. Cade.— No. I think that Mr. Renshaw was away. Anyway, I saw Mr. Banks soon after, and after my interview with Mr. Banks, I said to Mr. Renshaw —

Examination resumed by Mr. Lewis:

Q. Just a moment — tell us how you happened to see Mr. Banks? A. Mr. Banks called me up at my office.

Q. Just how long after the interview with Wood? A. I think it may have been the next day. It certainly was not longer than two days or three days. At the outside it was not over three days. He said, "I would like to see you, old man." And I said, "All right, where can I see you." He said, "Anywhere you say." I said, "I am going down home and I will drop into your office — No. 1 Dey street."

Q. Was that his office? A. Well, jocularly we used to call it Banks' office.

Q. That was a trade name, I assume?

Chairman Thompson.— You are a lot of jolly people, this signal outfit down here.

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Mr. Cade.— Well, they were until this Commission started.

Chairman Thompson.— You mean this investigation?

Mr. Cade.— I beg your pardon. I have not got it quite clear in my mind yet what it is. I know it is a legal body of investigation.

Examination resumed by Mr. Lewis:

Q. Now, we are at 1 Dey street — let us know what took place there. A. I said, "I will meet you down there — it is on my way home." And we met there, and he said, "Now, you got that Center street loop contract, didn't you?" I said, "Yes, I did." He said, "I would like to sell you some stuff for that." I said, "All right, but," I said, "unfortunately I years ago divorced myself from the purchasing department. I had so many people asking me to use my influence in the purchasing department that I made up my mind I would have absolutely nothing to do with it. No good salesman can be a good purchasing agent, and no purchasing agent can be a good salesman, and you will have to go to Renshaw for that." He said, "I have quite a good deal of influence around in this neighborhood, and very likely I might be able to help you, and you could probably help me." I said, "Very likely you can." He said, "There is that big thing on — I see you are the low bidder on that." I said, "Yes." He said, "If you get that, will you give us some business?" I said, "I cannot promise I will give you any business." He says, "Now, I think I can help you a good deal around here." "Now," I said, "that is —"

Q. What did you understand by his term "around here"? A. I understood in the vicinity of New York.

Q. In the vicinity of New York? A. Yes.

Q. You would not need any help anywheres else to get a contract here in New York? A. No.

Q. Well, what did "around here" mean? A. Why, I assume he meant in and around in this neighborhood here. My impression, Senator, was that I was familiar with the fact that Commissioner Wood had been a former partner of his; that his relations had been very pleasant, and that the influence that he might

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use probably would be exerted through Commissioner Wood. That was my impression at the time.

Q. And that was the impression he intended you were to have — in your opinion? A. In my opinion, it was, yes. I cannot say it was that impression.

Q. No, but in your opinion? A. In my opinion it was.

Q. Go on and tell us what else was said there. A. I said, "Now, here, Renshaw has taken that out of my hands; he is handling the whole thing, for which I am very glad. I think we will probably get that contract, but I will tell you what I would like you to do, Banks — you do everything that lays in your power to help us get that work, and if there is anything I can do for you I will."

Q. Now, what did you mean by that? A. Well, I intended to convey to him an idea, although I did not mean it, I intended to convey to him the idea that there might be some substantial reward for him in it, because I wanted Mr. Banks to help me in that. I really intended if in any other part of the country by saying a good word I could promote the sale of his goods without injury to my own company, that I would compensate him in that way.

Q. You intended for him to go to Wood and say that he, Banks, would deal with you on the award of this contract, didn't you? A. No, sir; I did not.

Q. You did not intend to do that way, but you intended him to understand that? A. I did not intend him to understand that. I intended him to understand absolutely that Mr. Renshaw was handling it, but if I could do anything I would.

Q. Along that line? A. Yes, but I did not think I could.

Q. You did not tell him that you did not think you could? A. No, I did not tell him that. I knew I could not.

Q. You did not tell of the conversation that took place in Commissioner Wood's office? A. No. There was still further conversation.

Q. Give us the rest of it for the record. A. The Commissioner then said, "Now, are there any other reasons that you can advance — this is to the best of my recollection — are there any

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other reasons that you can advance why we should feel that your company should have the contract outside of the two objections that were stated?" I said, "Yes, there is — there is one very good reason. In good faith the Public Service Commission through the Brooklyn Rapid Transit, invited us, or at least I believe in good faith they did — we accepted their invitation in good faith — invited us to bid. In good faith we competed for it — we did compete for it. When the bids were opened we were the low bidders all right. Not as a favor — we are entitled to that work, and we expect that you are going to give it to us." He said, "Is that all you have got to say?" I said, "Yes, absolutely all that I can say." Then the interview was ended, and I am not positive whether I said, "Well, Commissioner, I will drop in and see you again,"— or, he said, "Well, Cade, drop in and see me again some time." But there was a statement that I would call on him again by either he or I, and I never did.

By Chairman Thompson:

Q. What is your recollection? A. My recollection is it was an invitation extended by him. That is the impression I have.

Examination resumed by Mr. Lewis:

Q. Did he say, "Think the matter over and come and see me again"? A. No, I don't think he said anything like that. He did not use those words. I would say he did not use them.

Q. Did he suggest to you that after deliberation you might see things different? A. No, sir.

Q. Did he suggest to you that you might talk with Mr. Renshaw about the matter? A. No. I think it was generally recognized at that time that I was the only one had the handling of the contract. It was not generally known that Mr. Renshaw had relieved me of that part of the work.

Q. And Commissioner Wood, in talking with you, supposed he was talking with the man that had the power to deal? A. I haven't any doubt.

Examination by Chairman Thompson:

Q. Did you occupy the same relation to the Federal Company that Johnson occupied in relation to the Union Company, or that

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Johnson had occupied in relation to the Union Company earlier in the year? A. I had the same title.

Q. Sales agent? A. Yes, sir.

Q. And Wood knew that? A. I suppose so. It was a matter of common knowledge.

Examination resumed by Mr. Lewis:

Q. Well, now, have you told us all that you have to tell us in connection with your conversation with Banks? A. Yes. Subsequent interviews were a repetition of the original one.

Q. How many were there of those? A. Probably three or four. They continued along until Mr. Banks called me up one day, or I called him up — I don't know which. We were speaking over the telephone and Mr. Renshaw said, "Who are you talking with?" And I said, "Why, Banks." He said, "I would not bother with those fellows."

By Chairman Thompson:

Q. Who said that? A. Mr. Renshaw. Mr. Renshaw said, "I would not bother with those fellows. You are wasting a lot of time. We are going to get this contract." I said, "Well, are you sure of it?" He said, "Yes, no question about it." He said, "They cannot do anything else — a public thing and we are the low bidder." I said, "There is only one thing I always lose, and that is the thing I am sure to get."

Q. How long did you know Banks at that time? A. I don't know, sir. Certainly a long time.

Q. You knew he had been a partner of Wood? A. I knew he was a partner of Wood.

Q. How long had you known that? A. I had known by ordinary knowledge that Mr. Wood was with Mr. Banks before he was a Commissioner, and that Banks' partner had got a position on the Public Service Board. I never had met Mr. Wood. I always had met Mr. Banks in riding over the country, I would meet him in convention, and certainly a number of years.

Q. Did he tell you that he and Wood were partners? A. I don't remember. He may have told me, but it was a matter of ordinary, common knowledge.

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Q. Where was their place of business? A. I think it was somewhere on Church street. That was the first that I knew. I never had very much notice of where Banks' place of business was. I used to meet him at conventions, sat with him and talked to him and listened to stories that he had to tell.

Q. What was his line? A. Railway supplies.

Q. Steam or electric? A. Both.

Q. And where was their factory — did you know about that? A. I did not know. I was always under the impression that they had no factory, but that they were acting in a special sense as brokers. Now, in that I may be wrong, but that was the impression I always had.

Q. Ever at their office? A. I think I went to Mr. Banks' office. Certainly not more than once.

Q. 30 Church street? A. Yes. I think I went in there once, but I could not tell you when it was.

Q. Did Wood have an office there at that time? A. No, sir. It was subsequent to this. I had never been in Banks' office prior to the submission of the figures for the Fourth avenue job.

Q. What did Banks say to you about Commissioner Wood in this conversation at 1 Dey street? A. I don't remember that Mr. Banks ever mentioned Mr. Wood's name. He just simply made the statement that he had a good deal of influence around here, and probably may have said, "you understand what I mean," and of course I would as an ordinary salesman —

Q. You did understand, did you? A. I thought I understood.

Q. Generally speaking, Mr. Renshaw's testimony was true here, was it, the other day, as to his conversations with you? A. By his testimony —

Chairman Thompson.— Well, tell what you told Renshaw — when was it?

Mr. Cade.— A few days after I met Mr. Wood and probably the first time — certainly the first time I saw Mr. Renshaw — it may have been the first day and may have been within an hour or so. Certainly after I had my first interview with Mr. Banks.

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Q. What did you tell him? A. I said, "See here, you have got to go after that thing pretty strong." He said, "Well, why?" I said, "Well, these fellows want you to do something for them to help bring it." This conversation, of course, was between two officers of a company, and I anticipated at the time that I was giving information to my superior that he should have and would be of value.

Examination by Chairman Thompson:

Q. What is your fear — is somebody going to get after you for telling this thing here? A. I have no fear.

Q. Is there any code of morals among you fellows that you should not peach on each other or anything of that sort? A. No, sir.

Q. Why not answer these questions? What is the use of all this explanation and all this? A. I am at a loss how to behave here.

Q. Just behave natural and you will get along all right.

Examination resumed by Mr. Lewis:

Q. Who did you mean by "these fellows"? A. I meant Mr. Banks and his associates and by his associates I had an impression that it was Mr. Wood.

Q. Then you really meant when you talked to Mr. Renshaw that it was necessary for Mr. Renshaw or for his company — A. In my opinion.

Q. In your opinion — to put up some money for the benefit of Commissioner Wood, in order to get that contract? A. Yes, sir.

Q. And that impression you derived from your talks in Commissioner Wood's office and Mr. Banks' at 1 Dey street? A. Yes, sir.

Q. And you told that to Renshaw? A. I told that to Renshaw.

Q. And that was your impression at the time? A. That was my impression at the time.

Q. And still is your impression, is it — it is, isn't it? A. Yes, it is.

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Examination by Chairman Thompson:

Q. Now, Mr. Cade, you told Renshaw just as you say,— you had a talk with Wood and that you had a talk with Banks? A. Yes, sir.

Q. And that they were holding you up for money? A. I did not say they were holding us up. I said, I felt they were desirous of getting something. I told Mr. Renshaw and Mr. Renshaw said why — how do you know. I said, "How does a man know, Mr. Renshaw — The Commissioner gave me every opening that a man could possibly give to make a suggestion of that sort." He said, "How do you know." I said, "You don't have to ask me how I know," I said, "I am sure of it." That is exactly what I said. That that knowledge was based on a firm belief and strong impression that I had after an interview with these gentlemen.

Q. What was it that Wood said that put that strong belief in your mind? A. I have told you as nearly as I can the exact conversation between Mr. Wood and I.

Q. Was there something about his actions that impressed you? A. No, not exactly. I am a sales agent. He could have asked me the question he did and I could have given him all the answers I did in the committee room as well as I did in his private room. It was just one sequence after another that gave me the impression and belief that had I made advances they would not have been rejected.

Q. He called you out of a public meeting? A. Invited me.

Q. And took you out into his private office, shut the door and nobody else was there and had this talk with you and then Banks called you up? A. And then I felt as sure as anyone can possibly feel without having the absolute knowledge.

Q. Why did you have so much surety because of Banks, was it because Banks had been so friendly to Wood and you knew he was close to Wood? A. Yes.

Q. He mentioned Wood to you in that conversation? A. I am not positive.

Q. He swore he did the other day? A. I would not contradict Mr. Banks under any circumstances. If Mr. Banks said he did, he did.

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Q. Whatever Mr. Banks swore to the other day you think is so? A. No. There is a lot of things he swore to I can hardly believe. The matter of change for instance. I do not think I ever said I was short of change.

Q. Mr. Banks swore the other day that you approached him? A. I did not so understand it.

Q. He was the first that approached you in reference to it? A. I so understand it.

Examination resumed by Mr. Lewis:

Q. That is as you recollect? A. As I recollect it.

Examination by Chairman Thompson:

Q. Now didn't Banks tell you at that time — didn't he tell you that he had had a talk with Wood? A. No, sir. Not to my recollection.

Q. Didn't he tell you he was going to? A. Not to my recollection.

Q. Now didn't Wood say to you to see Banks or Banks would see you, or mention Banks in that talk? A. I don't recollect Mr. Wood ever mentioned Mr. Banks.

Q. Did you ever see Wood again after that? A. I never saw him after that.

Q. Did you ever talk to Banks after the time Mr. Renshaw told you not to? A. Never spoke to him on the subject in any way, shape or form.

Q. You did not go to his office No. 1 Dey street any more? A. I went there but never recollect meeting him.

Examination resumed by Mr. Lewis:

Q. Mr. Renshaw ever meet Commissioner Wood outside of the Commission hearings? A. Not to my knowledge.

Q. Did he ever meet Banks? A. Not to my knowledge.

Q. Have you had any talks with Banks since he was subpoenaed as a witness? A. Not until he had given the testimony the other day. I avoided it by dropping out of the elevator to avoid talking to him, so when you asked the question which I thought might be asked, I could truthfully say I never talked to him.

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Q. He spoke of that the other day. He thought it was rather rude of you? A. It was not only rude but it was perilous. The car was moving.

Q. You are rather light-footed. You were not afraid of a moving car? A. Not when it is to avoid Banks.

Q. Well discretion is always wise.

Chairman Thompson.—All right, Mr. Cade, you may be excused.

Mr. Cade.— I have awful important business.

Chairman Thompson.— You may be excused.

Mr. Cade.— For good?

Chairman Thompson.— We will subpoena you if we want you. In order to not cut off these smokers too much in one day we will take a recess now for ten minutes.

AFTER RECESS

WILMER W. SALMON on the stand.

Chairman Thompson.— I notice Assemblyman Mr. McCue is present and I glad to see him and would be glad to have him sit up here with us.

Examination by Mr. Lewis:

Q. Have you anything further you want to add, Mr. Salmon, to your testimony as it has been recorded? A. Why, Senator, I have tried to touch what I would regard as the high spots in a negotiation that continued over a period of three months. Now obviously it had to be very greatly condensed but I should be happy indeed to reply to any inquiries or questions that the Committee should feel that they would like to ask about this matter.

Q. Tell us just when the serious work of acquiring the Simmen patent was taken up? A. The urgent — pressing work as I recall it was very shortly after we received this inquiry from the Brooklyn Rapid Transit for the large — the Fourth avenue work.

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Q. And you had known of the Simmen patent prior to that time? A. Yes, sir.

Q. Had you conducted any investigation of it prior to that time? A. I understand a rather thorough investigation.

Q. Had you personally made any investigation of it? A. Oh, no. I never do, Senator. That is a matter which our counsel and engineers would go into very carefully.

Q. Had you ever seen a copy of it? A. I don't know as I had.

Q. Will you tell us just what the Simmen patent covered? A. I cannot do that. I am not expert enough to do that.

Q. Will you tell us what you had done in your development work along speed control lines? A. Well, what I had done, Senator, was to order our engineering staff to invent and to study and to invent and to submit to our counsel their inventions for the taking out a patent if they were subject to it, and I had further instructed counsel to give very close attention to that matter, as I regarded it as very important.

Q. Who do you mean by the term "counsel?" A. Generally on matters of that kind —

Q. Well, you say you had instructed counsel — to whom do you refer? A. I had talked with our chief patent counsel here in New York, Mr. Edwards, but the man to whom I gave chief instructions was our patent solicitor, Mr. Dodge, who is in our office in Rochester.

Q. What instructions did you give him in relation to the Simmen patent? A. Ultimately, and by ultimately I mean shortly, following the invitation to bid for the N. Y. M. works — instructions were given him following an interview in which our chief engineer had stated, and I think our consulting engineer also, that in their judgment we could not get a thoroughly successful or anywhere near ideal system of speed control without employing the principles named in the Simmen patent.

Q. Now, could you give us what those principles are? A. No, sir, I would not attempt it, Senator. Our counsel is here and our engineer, and they can tell you about that. I could not.

Q. Now, your specifications did not call for any speed control installation? A. You mean the New York Municipal specifications?

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Q. Yes. A. I had been then advised in March, 1914, that the engineer's maintenance of way meeting in Chicago, who, I think, it was Mr. Johnson, the signal engineer of the New York Municipal, that his people were not satisfied and would not be satisfied with the ordinary standard type of signalling such as they were employing on the Interborough for example, if they could obtain a more efficient, more economical and safer system having greater capacity than was afforded by the Standard system. And immediately following my return to Rochester I had a conference with our chief engineer and probably others — I remember distinctly our chief engineer, with respect to this conversation that I had with Mr. Johnson.

Q. Did you know of the Simmen patent at that time. A. Oh, yes.

Q. When did you first know of the Simmen patent? A. I should say probably some time in 1912.

Q. And by whom was it called to your attention? A. I suppose our counsel.

Q. Have you any recollection on the subject? A. No. I recall from looking over some correspondence that was early as May, in May, 1913, we had a report from an engineer formerly in our employ who had had some conference with Mr. Simmen I think in Indianapolis. This man had I believe sought to obtain information from Mr. Simmen as to the terms on which he would let the control of his patent go or would license us. We very frequently employ men outside of our own organization to approach inventors. Our idea being the moment any signal of any standing or repute is produced — that in anything of that character we would be likely held up for a much larger sum than would otherwise be the case. I have seen a report dated sometime in May, 1913, from this engineer, Mr. Hovey, stating that he had had an interview with Mr. Simmen at that time. Now I think that earlier than that we had sought to have some information as to what we could do in respect to obtaining control of this thing — the Simmen patent.

Q. Did you understand the Simmen patent had ever been developed perfectly? A. Oh, I knew it had not been.

Q. Well, did you know it was claimed that actually a device constructed under the Simmen patent had actually been installed

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and in use? A. No, I did not understand. Not the Simmen patent I know about. There are other Simmen patents, we have no right or license under.

Q. Is it or is it not true there was said to be an installation at or near Indianapolis of a speed control that was in actual operation? A. I cannot testify to that. I know there was what has been called a Simmen system but I do not understand it was the kind of a system that we are licensed to operate under.

Q. Did you understand you were licensed to operate under the speed control system of cab signal or cab signal systems? A. There is no relation whatever between the two things.

Q. Now which did you intend installing under your contract with the New York Municipal Railway, speed control or the cab signal? A. Both. The cab signal is, if I may explain —

Q. That is what we want. A. The signalling scheme ordinarily employed use what is termed in the art of signalling, fixed signals along the right of way. Those signals so fixed on a mast along the right of way and the train approaching one of those signals get whatever information the signal may give. Now the difference between fixed signals and the cab signals is the train carries its own signal instead of taking up fixed signals along the way. The signal is placed in the cab or the motorman's box on the car. So that he has it constantly before him. That constitutes the difference between the fixed and moving or cab signal. Now the speed control scheme may be used with the system of fixed signals or cab. There is no relation between the two. One is one phase of the part of the signal system and another another phase.

Q. Now, the system which you are planning to install on the Brooklyn Rapid Transit involves both the cab and speed control? A. Yes, sir.

Q. Now, which one is covered by the Simmen patent? A. The speed control feature.

Q. Is that, as far as you know, in use on any road in this country? A. I think not. I am not qualified to testify on that, Senator, but so far as I know the speed control system which we know as the Simmen speed control scheme, so far as I know, is not in use.

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Q. How many patents did you acquire from Simmen? A. This is pure guess work. First I do not think we have acquired any patents? We have acquired rights as I understand it under a certain patent of Simmen's and right under any patent that might hereafter issue to Simmen.

Examination by Chairman Thompson:

Q. You have an agreement in writing with them? A. Yes.

Q. Is that here? A. Mr. Dodge, have you a copy of the agreement? (The witness produces contracts.)

Q. Is this the only contract you have got between the Simmen Company and yourself? A. I will have to ask for information. Have we any other agreement with Simmen? There is the agreement and option antedating the permanent agreement, and, of course, ceased to exist when that was entered into.

At this point Senator Lawson assumed the Chairmanship.

By Mr. Lewis:

I will offer in evidence, Mr. Chairman, the agreement, dated the 8th of September, 1914, between Simmen Automatic Railway Signal Company and the General Railway Signal Company, said to be the option agreement, to which Mr. Salmon has referred.

Mr. Wilcox.— May I just make the suggestion: I have not had a chance to consult with my client on this. We want the Committee to have the fullest knowledge on this, but there may be some matters that we do not want spread on the record.

Mr. Lewis.— It will not be put in the record. I think we will offer them in evidence as a matter of record, and I would like to take them for this evening and study them.

I also offer in evidence the agreement dated the 5th day of September, 1914, between the Simmen Automatic Railway Signal Company and the General Railway Signal Company, referred to as the license.

Mr. Salmon.— Yes, it is a license or agreement. You understand, Senator, these things are coming before me constantly, and I do not charge my memory with these details.

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Examination resumed by Mr. Lewis:

Q. I appreciate that. Now, under the terms of the license, it became necessary for your company to pay to the Simmen Automatic Signal Company some amount of money in cash? A. As set forth in the agreement.

Q. Was such payment made? A. I believe those provided to be made have been made as provided.

Q. And paid by check? A. Yes.

Q. Will you produce the checks that have been issued by your company?

(Witness produces some checks and papers.)

Mr. Lewis.— I offer in evidence drafts upon the Mechanics and Metals National Bank, New York city, dated Rochester, N. Y., September 10, 1914, No. D8295, "Pay to the order of Simmen Automatic Railway Signal Company, $500 (figures), Five Hundred Dollars (writing) signed General Railway Signal Company, J. S. Braam, Assistant Treasurer." Attached thereto a document reading, "For the amount of the first payment as provided for under an option and agreement dated September 10, 1914, by the Simmen Automatic Railway Signal Company to the General Railway Signal Company, covering certain letters patent and rights relative to Simmen speed control devices, $500. Same received and entered September 9, 1914. Invi.—54."

Mr. Salmon.— It is the number for a particular charge account.

Mr. Lewis.— Also rubber stamp, "Paid September 10, 1914. D. O. 1-90-74." Also attached thereto voucher reading as follows: "Rochester, N. Y., September 10, 1914. General Railway Signal Company to Simmen Automatic Railway Signal Company, September 10, 1914, $500 for the amount of the first payment as provided under an option and agreement dated September 8, 1914, by the Simmen Automatic Railway Signal Company to the General Railway Signal Company, covering certain letters patent and rights relative to Simmen speed control devices, $500. Approved for payment, J. F. Braam, Treasurer." Below, "Received — date — By General Railway Signal Company, $500 in figures and

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in words in full of above account. Signed Simmen Automatic Railway Signal Company. P. J. Simmen, President."

I offer in evidence draft General Railway Signal Company, upon the National Bank of Rochester, Rochester, N. Y., reading as follows: "Rochester, N. Y., December 8, 1914, No. C20966, Pay to the order of Simmen Automatic Railway Signal Company $20,000 in figures and written out, signed General Railway Signal, J. F. Braam, Assistant Treasurer." Voucher dated Rochester, N. Y., December 8, 1914. General Railway Signal Company to Simmen Automatic Railway Signal, December 8, 1914, $20,000 for payment due 12-8-14, for license and agreement dated, 1-5-14. Approved for payment, J. F. Braam, Assistant Treasurer. Received November 8, 1914. By General Railway Signal Company, $20,000 in figures and written out in full of above account. Signed Simmen Automatic Railway Signal Company, P. J. Simmen, President.

I offer in evidence draft General Railway Signal Company upon the National Bank of Rochester, dated Rochester, N. Y., September 8, 1915, No. C24153. "Pay to the order of Simmen Automatic Railway Signal Company $10,000, General Railway Signal Company, J. F. Braam, Assistant Treasurer."

Also voucher dated Rochester, N. Y., September 8, 1915, General Railway Signal Company, to Simmen Automatic Railway Signal, September 8, 1915, $10,000 for minimum yearly royalty per agreement, November 5, 1914. Approved for payment, J. F. Braam, Assistant Treasurer. Received September 9, 1915, by General Railway Signal Company, $10,000 in full of above account; signed, Simmen Automatic Railway Company, P. J. Simmen, President.

(Received in evidence.)

Senator Lawson.— We will suspend now until to-morrow morning at 11 o'clock. The witnesses are directed to be present.

At this time Senator Thompson appeared and called the Committee to order again with Wilmer W. Salmon still on the stand.

Examination by Mr. Lewis:

Q. Mr. Salmon, you had a conversation with Mr. Renshaw and Mr. Cade on the subject of the award of this contract, did you not,

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of this contract to the Center street loop contract, do you recall that conversation? A. I do not recall any conversation with Mr. Cade and Mr. Renshaw, on the Center street loop.

Q. Well, which contract did it relate to? A. The Fourth avenue.

Q. Tell us when that took place, will you? A. I think, Senator, that the conversation referred to, took place about the second day of December, I think it was following a public hearing at the Commission rooms in the Tribune Building, I believe it is. I had ridden up on the train, as far as I recall it, to the Belmont Hotel.

Q. On the subway? A. On the subway, and I had some talk with them going up about this hearing and the character of the conversation was rather general.

Q. Let us get the facts on the record. That was after there had been a hearing at the office of the Commission upon the subject of the Federal Company's right to install a system? A. Yes — it was following — I think following the second public hearing.

Q. Well, just tell us what you remember of that hearing, in order to get the relation of the conversation? A. Well, I recall that at the hearing, I was asked to make some statement as to how we arrived at these figures, these final figures that covered our speed control system and that such a statement was made. I do not recall who — Chairman McCall was there and Commissioner Wood and Commissioner Williams, I think, and whether any other commissioners were there I do not recall, but there were engineers of the Commission and engineers of the railway company, I think. As I recall it, Commissioner Wood had been rather persistent in asking certain — what seemed to me elementary questions, questions that indicated to me a very mediocre amount of information as to what the speed control was and how we would purpose to accomplish this, that or the other thing. I recall distinctly that at that time it struck me, well, the information that he was asking for seemed to me greater than he would be likely of his own volition, of his own knowledge, be able to ask.

Chairman Thompson.— Or to be able to absorb after he asked it?

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Mr. Salmon.— No. I figured Commissioner Wood had not had very much experience in signal matters, and the nature of the questions indicated to me that he was asking questions in a fashion that would betoken some coaching on the part of somebody that knew more about it than he did, but nowhere near about the matter as one of our principal competitors would know. I think that Mr. Wood was reminded by some of the Commission, by the commissioner engineer, or by some one else present, that the matters that he was asking about were rather elementary, and had been gone into very carefully by the engineers of the Commission and the engineers of the railway company, and their consulting engineer. And that matter, as to repeated questioning, rather got on my nerves after a while, and I think I was a bit short to the Commissioner, so that my attitude toward him was the subject of some comment either by Mr. Renshaw or by Mr. Cade, or perhaps by both. And following that comment, as a pure flier, I said to Mr. Renshaw or to Mr. Cade that I had found myself wondering what their relations with this man might be.

Chairman Thompson.— Where were you when you said this?

Mr. Salmon.— In the Belmont. Either on the train going up to the Belmont, or at the Belmont.

Examination resumed by Mr. Lewis:

Q. You sat down in the Belmont and visited? A. I think we had a drink.

Chairman Thompson.— Was Renshaw there and Cade?

Mr. Salmon.— I think they were both there. I am quite sure that both came up on the train, and I believe both were there at that time. Of course it has been some time since. That is a recollection I have of the matter.

Chairman Thompson.— Just tell us what was said.

Mr. Salmon.— As I recall it, Mr. Cade then, after a second's hesitation, a very brief period of hesitation, stated to Mr. Renshaw that it was a very curious coincidence that I should bring up this matter which indicated that I had entertained some thought of that nature about a Commissioner, when they on their part had

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had a like conversation with respect to us — wondering whether or not we had any improper relations with such a man.

Examination by Mr. Lewis:

Q. What else was said? A. I think that that about concluded it. It was said in a half serious fashion on both sides. There was no question made on either side, but I think each understood that the other was trying to feel the other.

Q. Now, was it your opinion, based on the hearing that day, that Wood was asking questions which had been suggested to him by Cade or some one representing the Federal Company? A. I would not say I held that as an opinion, but I must admit that any understanding of the motive — what motive might have actuated it, I was inclined to be a bit cautious. I did not feel that I was quite sure of why this rather, as it seemed to me, extraordinary interest should be displayed, and not knowing why, I was not disposed to give any more information than we were obliged to give.

Examination by Chairman Thompson:

Q. Have you stated all that conversation that occurred at that meeting where you and Cade and Renshaw were present? A. I think in substance.

Q. You gave that the other day, that talk, didn't you say something after Cade and Renshaw consulted — didn't you say something further? A. I don't recall it.

Q. Didn't you say that you — that that also confirmed your suspicion of what they had been doing? A. That I said that to them?

Q. Yes, or words to that effect? A. No, I never said that.

Q. Or to me? A. No, I did not say it to you or to anyone that I said to them that it confirmed any suspicion that I had.

Q. Did you say something to them that you had beat them to it, or words to that effect? A. No, nothing doing.

Q. Didn't you tell that in the room the other day? A. No, sir; nothing.

Q. Never said that or words to that effect at all? A. No.

Q. You have not told all the conversation that you told in the other room? A. Just what conversation did I tell in the other room?

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Q. You told all the conversation that you told in the other room the other day in talking with me? A. I told all I recall that I told you in respect to that conversation.

Q. You do not recall then, that that conversation carried with it, that you turned and made some comment after Cade turned to Renshaw and commented as you have testified — you do not recall now that you made any comment after that? A. I do not recall at this moment that I made any comment on that remark of Cade. I do recall that I had a very marked suspicion growing out of what appeared to be Mr. Cade's hesitancy, a momentary hesitancy in replying.

Q. And didn't you say anything on that occasion? A. I don't recall it.

Q. You don't recall? A. No.

Q. Didn't you say to me the other day, "I expected something of this kind, and we will beat you to it"? A. No, sir; I never told you anything of that kind at all, because it never took place. There was never any question about beating anybody to it.

Q. You say you did not say that to me here within a week? A. I most decidedly say I did not say it to you, because it is not so, and anything that I have stated —

Q. You have answered the question. I have not any more to ask.

Chairman Thompson.— We will suspend now until to-morrow morning at 11 o'clock.

Whereupon, the Committee adjourned to meet December 31, 1915, at 11 A. M., at the same place, 165 Broadway, N. Y.

DECEMBER 31, 1915

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Chairman Thompson.— The Committee will come to order. I want to make this statement: Some time ago we subpoenaed an

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employee of the Interborough Company by the name of Fuhrer, and he is from the purchasing department, and I think his name was Mike Fuhrer. Mr. Fuhrer had some negotiations with Mr. Banks of the Northwestern Construction Company, and he came here and produced a check for five hundred dollars on some bank. I have forgotten what bank it was. While he was on the stand, he was asked by the Chairman of this Committee if he would give the Committee's expert access to his bank account, and he promised to do so, and stated that he consented to that, but from that time since he has refused or neglected to give Mr. Morse a letter to the bank, and the account has not been received. I this morning sent to the Interborough office for Mr. Fuhrer. I was told he was there, but he did not come down, and pretty soon, Mr. Delaney, from the Interborough office, came to me and said that he understood that I had received a letter from a lawyer of Niagara county, and that I might be willing to give some favors to Mr. Fuhrer, and I told him that if my own mother asked me in that respect, that her request would not be granted, and Mr. Fuhrer would have to give us access to his bank account, and told him to go back and have Mr. Fuhrer come down and give Mr. Morse access to his bank account. After that I was called on the telephone by a lawyer who asked me not to call on Mr. Fuhrer, which I refused, and said Mr. Fuhrer would have to come here, and in about fifteen minutes I was called by Mr. Delaney who said Mr. Fuhrer has left the office, and it was twelve o'clock, and they closed the office, and he had left the office. I now call for a subpoena for Mr. T. P. Shonts, to have him come before this Committee, and he will ascertain where Mr. Fuhrer is.

ARTHUR J. BALDWIN, being first duly sworn, testified as follows:

By Mr. Lewis:

Q. Mr. Baldwin, are you willing to waive such immunity as the statute affords you, and the Constitution? A. I am not.

Q. You decline to waive, do you? A. Yes, sir, I decline to waive.

Q. What is your business? A. Attorney.

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Q. Where are you located? A. 27 Pine street, New York.

Q. Was there a time when you conducted some negotiations with the General Railway Signal Company relating to a patent or patents known as the Ford patents? A. Yes, sir.

Q. When was that? A. A year ago this fall, the fall of 1914.

Q. Who was your client? A. Myself.

Q. Are you the owner of the patents? A. I am.

Q Were you at the time the owner of the patents? A. When the negotiations started, I was not, but I afterward made arrangements with the inventor for them.

Q. Whom did you represent when the negotiations started? A. Myself.

Q. Who was the owner at that time? A. Hannibal C. Ford.

Q. Where was his place of business? A. At that time he was the Sperry Gyroscope Company.

Q. Located where? A. In Brooklyn, near the end of the bridge, I forget the exact number.

Q. What was the nature of those patents? A. Speed control.

Q. How many were there? A. Two.

Q. With whom did you negotiate as the representative of the General Railway Signal Company? A. Two attorneys, Mr. Edwards and Mr. Dodge and Mr. Salmon.

Q. Mr. Edwards and Mr. Dodge representing the General Railway Signal Company? A. Yes, sir.

Q. Will you tell us the particular features covered by these patents? A. Yes, sir. These patents in my opinion embrace the fundamental claims relating to all speed control devices. The Committee should bear in mind the difference between speed control and automatic stops. This is a speed control device and system.

Chairman Thompson.— What is Simmen's patent?

Mr. Baldwin.— I am not a patent expert, Mr. Chairman, and I would rather not characterize the Simmen patent. This is the Ford patent.

Chairman Thompson.— Did you have speed control with this patent, without the Simmen patent?

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Mr. Baldwin.— I believe the Simmen patents are a modification of the idea, and that the Simmen infringed the Ford patent, for this reason, Ford was the first inventor to conceive the idea of controlling the speed of a train from the rear platform, or from the rear car of a moving train, and in that he received the broadest kind of claims. Claim one reads as follows: "In a railroad system—"

Chairman Thompson.— Offer them in evidence.

Mr. Baldwin.— I would like to read just two claims, and I will only read two, to illustrate: "In a railroad system, plurality of trains each having a traveling zone of variable influence extending from the rear car thereof, and a means governed by said zone of variable influence for controlling the speed of the following train," and he is the first inventor to obtain that claim. Second, "In a railroad system, means for governing the speed of a train in proportion to its distance from a preceding train." Prior to Ford's invention of the automatic device, they were all really automatic stops. They were systems for setting a signal within which the train could not go. If it did, it was derailed, but Ford conceived the idea, and I believe was the first inventor, and secured two patents which are the ones in question, and which contain very broad claims.

Chairman Thompson.— Is this a better patent than the Simmen patent?

Mr. Baldwin.— In my judgment the Simmen patents are valueless without this.

Chairman Thompson.— Supposing you had this and Simmen's, which would you like best?

Mr. Baldwin.— The Simmen's in my judgment is a detail for applying the principles enunciated in the Ford. Ford being the first inventor, was granted broad claims. Mention is made in the newspapers that there are some two or three thousand speed control patents. I wish to give it as my opinion that I think there are only eight possible speed control patents, and that the other

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2,900, or whatever the number is, relate to automatic stops for trains.

Chairman Thompson.— There are eight speed control patents in my office at Lockport at the present time.

Mr. Baldwin.— I think the number is very limited. I do not think there are over eight or ten speed control patents.

Chairman Thompson.— There are eight in my office.

Mr. Baldwin.— I don't know about that.

Q. Will you give the number of this patent for the record? A. Yes, sir. Letters patent, No. 809,794, patented January 9, 1906; and also letters patent, No. 815,086, patented March 13, 1906.

Senator Lawson.— Do you claim these to be basic patents?

Mr. Baldwin.— Yes, sir.

Chairman Thompson.— Why do you say this patent is more important than the Simmen patent?

Mr. Baldwin.— In my judgment.

Senator Lawson.— Has any other expert on patent matters passed an opinion as to these being basic patents: you know what I mean, the basic patents?

Mr. Baldwin.— Yes, sir. I have obtained formal opinion upon that score. I have been informed, but it is entirely hearsay, that these patents have been declared basic patents, and I believe so from the efforts that have been put forth to obtain control of them.

Q. I assume that a patent bearing No. 809,794 was issued subsequently to a patent No. 439,334, was it not? A. There was a little difference in the issuance of the patent. The primary patent is 815,086.

Q. Keep that number in mind, 815,086. A. Right.

Q. That must have been issued subsequently or after the patent No. 439,334, must it not? A. Yes, sir.

Q. And do you say patent No. 439,334, issued prior to patent No. 809,086, is an infringement upon patent 809,086? A. You mean 794, do you not?

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Q. Let me state the question again; do you say that the patent which was issued at the earlier date is an infringement upon the patent issued at the later date? A. No, sir. Application for these two patents was filed the same date, September 12, 1905.

Q. The Simmen patent, described in the contract between the Simmen Automatic Signal Company and the General Railway Signal Company is No. 439,334; that is a patent acquired from Simmen? A. Yes, sir.

Q. Do you say that that patent, so acquired, is an infringement upon patent issued at a later date and number 809 thousand something? A. That particular patent, I cannot charge anything of infringement from the date.

Q. Is it possible a patent issued twelve years ago is an infringement upon a patent issued eight years ago? A. Certainly not.

Q. Your statement as to the Simmen patent being an infringement of the Ford patent, is not strictly accurate, is it? A. I don't think the Simmen patent embodied a claim for the control of the following train, or embodied the idea of a zone of variable influence.

Q. Your Ford patents relate only to those two features? A. Those features.

Q. And not exclusively to speed control? A. That is a means of speed control.

Q. But relating only to the speed control of trains following those upon which the installation had been made? A. Yes, sir, it has a broad claim.

Q. There may be a patent issued for speed control which does not have the feature of controlling the speed of a train following, which would not be an infringement? A. Certainly.

Chairman Thompson.— What is speed control?

Mr. Baldwin.— I think the words used are descriptive in that.

Chairman Thompson.— How is it used in the art, in the vernacular of the railroad people, the people who use it; what does it mean?

Mr. Baldwin.— Speed control means the control of the rate of speed with which a train moves.

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Chairman Thompson.— The engineer does that.

Mr. Baldwin.— He does that, but that is the human element. This device is for doing that automatically.

Chairman Thompson.— You mean a device which will do what the engineer does.

Mr. Baldwin.— Yes, sir.

Q. When did the negotiations for the use of these patents begin? A. I am not certain of the exact date.

Q. Can you tell us in what year it was? A. Yes, sir, either in November or December, 1914.

Q. At or about the time of the award of the contract by the New York Municipal Railway Company to the General Railway Signal Company? A. At the time that this began I never heard of the awards or knew nothing about it at the time I became interested in these patents.

Q. Did you know of the fact bids had been submitted for the installation of a signal system on lines of the New York Municipal Railway Company? A. I think from general information I had.

Q. Did you know the General Railway Signal Company was one of the bidders for that contract? A. Yes, sir.

Q. And you knew at the time the negotiations for the sale of these patents begun? A. Yes, sir.

Q. With whom did you first take the matter up? A. Let me go back to how I became interested in the patents. Mr. Hannibal C. Ford is, I might say, a family friend, having been born in the same town, and although a younger man, a graduate of the same university, and having need of legal advice he came to me in regard to the matter in November, I think it was, 1914. Just at that time there was some accident on the elevated where a collision occurred in which in a conversation he said that he had some patents relating to speed control, and I said, " Bring them in, I would like to see them." I have done something with patents, and I looked them over. He brought them in and I looked them over, and I saw what I thought was a good patent.

Chairman Thompson.—When was that?

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Mr. Baldwin.— I am not certain whether the last of November or the first of December of last year. I looked through the patents and I thought it was a pretty good idea.

Chairman Thompson.— Who called your attention to these patents?

Mr. Baldwin.— Mr. Ford, the inventor.

Chairman Thompson.— When.

Mr. Baldwin.— The last of November or first of December.

Chairman Thompson.— How did he happen to come to you?

Mr. Baldwin.— He had been the mechanical expert for Mr. Elmer Sperry in the perfection of the gyroscope compass used in the navy, and he also worked upon the stabilizer upon the aeroplane, which Mr. Sperry brought out at that time, and he had a contract with the Sperry Company, and he came to me with regard to that contract at that time, because he had perfected while in the employ of the company what is known as a battleship tracer, a device which plots the course of the battle of both ships, so that the enemy's ship is traced and his own ship, and that device he had perfected by blueprints and had sold one to the Federal Government upon his blueprints and patent had not issued, and application made, and a dispute arose as to whether those patents belonged to the Sperry Company or his own patent, and he came to me in that regard, because at that time there was a stockholders' trouble in the Sperry Company, and I advised him in that regard, and while in that connection I was acting as his counsel in that regard, and it was while those negotiations were on with Mr. Sperry that I became interested in these patents. I may say that I also acquired a half interest in the battle tracer patent which I afterwards disposed of to the Sperry Company under royalty terms.

Q. That was the beginning of your negotiations, was it? A. Yes, sir.

Q. With whom representing the General Railway Signal Company did you take the matter up? A. The first thing I did when I saw this idea, I turned to the directory, because I knew there

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were two signal companies, and I didn't know there were but two, and I saw the Union and the General, and I turned to the directory of directors and I noted in the Westinghouse Company, as I always termed the Union, the names of the directors I knew, and among them Mr. Herman Westinghouse, and of the General was Mr. Finucane, who was the only director I happened to know of the directors of the General. I called Mr. Westinghouse on the wire, but he was not in. Two or three days after that I met Mr. Finucane by chance in the Waldorf hotel, and in the course of conversation my mind ran back to that and I said to him I had some patents which I thought would be of interest to the Signal Company, and he wanted to know what they were, and I said the Ford patents for speed control, and he said that their company had the Simmen patents relating to speed control, and I told him I thought the Ford patents were fundamental and I would like to show them to him, and if he was down town to drop in, and possibly two or three days after that, I can't tell, Mr. Finucane came into the office, and I took the patents and showed them to him, as they are, and he asked to take them with him, and he did, and two or three days after that he came in with Mr. Salmon, and we had a discussion about whether the patents were fundamental.

Chairman Thompson.— Where was the conversation with Salmon and Finucane?

Mr. Baldwin.— In my office, 27 Pine street, and Mr. Salmon said the matter was so much of a patent question he wanted the advice of his counsel upon the matter, and would I mind going over the situation with the patent counsel, and I said not the slightest. Shortly after that, I don't know when, Mr. Dodge came in alone, at which time we went over this patent situation.

Chairman Thompson.—Where is he, here?

Mr. Baldwin.— Mr. Dodge is a patent lawyer. I don't know whether his headquarters is New York or Rochester, but he is one of the patent counsels for the company.

Chairman Thompson.— Of what firm?

Mr. Baldwin.— I really do not know. I never saw Mr. Dodge before. He is counsel for the General Railway Signal Company.

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Chairman Thompson.— What is his first name, do you know?

Mr. Baldwin.— Lyman E. Dodge, and I saw him here this morning. Mr. Dodge and I went over the plans, and of course Mr. Dodge tried to argue with me that they were not fundamental patents, too broad, and broader than the specifications allowed on a device shown in the specifications, and wouldn't work, and the usual claims of a patent expert upon any patent that becomes involved in controversy. On the contrary, I took the opposite side. We argued it through, and finally I convinced Mr. Dodge, I think, that all these were fundamental claims, and the proposed plan which was awarded to them in Brooklyn, could not be installed except as an infringement of this device, because this was a speed control, and he went away. The next interview was with Mr. Salmon, when he came back and asked how I got on with Dodge, and I told him, and he wanted to know on what terms they could acquire these patents, and we dickered some in regard to prices, and I put a fancy price on them, and he said they didn't want to spend a great amount for patents, but they would like to obtain an option on them, and I said I wouldn't give them an option on them.

Q. The contract had been awarded to them, had it? A. I think the contract had been awarded. I am not certain. I mean those dates are not in my mind.

Q. You made the statement that the contract had been awarded? A. We were talking of the Brooklyn Rapid Transit Company contract.

Q. That had been awarded, had it, at the time you talked with Mr. Salmon? A. I am not certain in regard to that. It had been awarded by the B. R. T., those recommendations had gone forward. Whether it was approved by the Public Service Commission at this time or not, I don't know.

Q. Go on with your conversation with Mr. Salmon. A. At that time, Mr. Salmon suggested how about an option, and I said no we couldn't do that, that I wanted a payment down, but I would be willing to gamble on the success of the operation of the system, because I believed in it, but if they wanted control, there would have to be some payment made.

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Q. Let me interrupt you right there; you don't claim to be a patent expert, I understand? A. I am a member of the Patent Bar. I never have qualified as a patent expert, but I have bought and sold many patents.

Q. Didn't you say you were not a patent expert? A. I used that term; to the extent of going on the stand and testifying as a patent expert, I have not.

Q. You are not an inventor? A. Yes, sir, I am modestly so.

Q. You have prosecuted applications for patents? A. Yes, sir.

Q. Have you ever testified as an an expert in patent cases? A. Not as an expert, as such.

Q. Have you ever conducted litigation involving the validity of patents? A. Yes, sir, my own patents.

Q. And for other clients? A. Yes, sir.

Q. So you regard yourself as an expert, notwithstanding your statement a few minutes ago, you did not regard yourself as an expert? A. I do regard myself as knowing a patent when I see it.

Q. You were willing, after a few days joint ownership and opportunity for study, you were willing to guarantee its effectiveness, were you? A. I did not guarantee its effectiveness.

Q. Didn't you say you were willing to gamble on its effectiveness? A. Yes, sir.

Q. What did you mean by that? A. If it was a success, I was to be paid, and if not I wasn't.

(By direction of Mr. Lewis, the stenographer read from a preceding answer by Mr. Baldwin, the following:

> "I would be willing to gamble on the success of the operation of the system, because I believe in it, but if they wanted control, there would have to be some payment made.")

Q. You meant you would be willing to risk something on the success of it? A. Yes, sir.

Q. What would you be willing to risk? A. I bought the patents, and would be willing to risk what I paid for them.

Q. Did you buy the patents outright? A. Yes, sir.

Q. And pay for them? A. Yes, sir.

Q. In cash? A. Yes, sir.

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Q Will you tell us what amount you paid for them? A. Five thousand dollars.

Q. And to whom did you pay that? A. Mr. Ford. I brought, Mr. Senator Thompson, the check to show you, as you rather doubted my word the other night.

Q. Did you take an assignment of the patent? A. Yes, sir.

Q. Did you put it on record? A. Yes, sir.

Q. In the patent office? A. Yes, sir.

Q. Is this the check you gave Mr. Ford in payment? A. It is.

Mr. Lewis.— I offer the check in evidence It is drawn upon the Essex County Trust Company, of New Jersey, dated December 23, 1914, pay to A. J. Baldwin, five thousand dollars, figures and letters, signed, A. J. Baldwin. Enclosed, Pay to H. C. Ford or order, A. J. Baldwin. Further endorsed, H. C. Ford, and further endorsed, Hannibal C. Ford, and paid through the Metropolitan Bank of New York, endorsements guaranteed, Queens County Trust Company, Jamaica, New York.

The same was received.

Q. Is your home in East Orange? A. I reside at 35 Fifth avenue, but I sleep in East Orange, and have for a good many years.

Q. Your voting residence, I assume, is 35 Fifth avenue? A. Yes, sir.

Senator Lawson.— You bank also in East Orange?

Mr. Baldwin.— Yes, sir, I do. I noticed that insinuation in the press. I have done business with that bank for seventeen years, and it is the only place I have a private banking account. I wanted to say that to the Committee.

Chairman Thompson.— It is not an insinuation, that your bank account is in the Essex County Trust Company. That is a fact, isn't it?

Mr. Baldwin.— Sure, it is a fact.

Senator Thompson.— Was that the date that you bought the thing, the date of that check?

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Mr. Baldwin.— No, sir, that is the day I paid for it. That is when it was paid for.

Chairman Thompson.— How many days before that did you take it up?

Mr. Baldwin.— I should think about two or three weeks prior to that I had asked Ford what he would take for the patents, and how much he wanted.

Chairman Thompson.— The whole of the negotiations with Ford in reference to this matter was a matter of two or three weeks, and culminated in giving that check?

Mr. Baldwin.— Yes, sir, and I asked Ford how much he wanted for his patents, and he said he would like to get five thousand dollars, if I didn't think it was too much. And I said, "Would you be satisfied with five thousand dollars?" He said, "Yes," and I said, "All right, I think I can dig up five thousand dollars."

Senator Lawson.— Was that the date the written assignment was made?

Mr. Baldwin.— Yes, sir.

Senator Lawson.— Is the written assignment on file in Washington?

Mr. Baldwin.— Yes, sir.

Q. The negotiations began two or three weeks before that? A. Yes, sir.

Q. And at the time you knew the General Railway Signal Company was a bidder on the New York Municipal Company lines? A. Yes, sir, and all the companies, and I want to say in regard to the patent situation, I have a fondness for patents.

Chairman Thompson.— I would, if I could buy them for five thousand dollars one day and sell them the next day for ten.

Mr. Baldwin.— Possibly if it cost you as much as it has me to acquire that knowledge, it might make some difference. You asked me if I was an inventor. I have taken out a good many patents, some of them worthless, and some of them very good. I

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have disposed of — I don't like to say this, but I think it is challenged, and I will say it, that my patents in the wire glass industry, which is the manufacture of wire glass, I disposed of to the American Company for sixty thousand dollars, and to Messrs. Bilkington Brothers, the largest glass manufacturers in England, for nine thousand pounds sterling, which is in the neighborhood of forty-five thousand dollars.

Q. You understand I was asking for information only, and not because I had any doubt about your ability as an inventor? A. I have taken out quite a number of patents, some of them good and some not so good.

Q. You came to a time when Mr. Salmon came to reach the conclusion that he would buy your patent? A. Yes, sir. Mr. Salmon said he would ask his firm of attorneys to communicate with me, Mr. Edwards, and Mr. Edwards came in and I negotiated with Mr. Edwards for some time on the terms and price and finally concluded it on the 29th of December, 1914.

Q. And previous to the conclusion of the agreement —

Chairman Thompson.— Have you the assignment from Ford?

Mr. Baldwin.— That was filed in Washington.

Chairman Thompson.— That was an absolute assignment?

Mr. Baldwin.— Yes, sir.

Q. Previous to the conclusion of the agreement between you and the General Railway Signal Company there had been talks of an option, had there? A. Yes, sir.

Q. And in that talk relating to the option, had anything been said of the option containing a provision that it was to be accepted only in the event of the award by the New York Municipal Railways Company of the contract for signalling to the General Railway Signal Company? A. No suggestion of that kind in any form, Senator.

Q. What was the amount upon which you finally agreed with the representatives of the General Railway Signal Company, as the selling price of the patent? A. I granted an exclusive license.

Q. You did not actually sell the patent then? A. No, sir, I

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granted an exclusive license to the General Railway Signal Company on a 5 per cent royalty, $10,000 paid as advanced royalty.

Q. And is this the contract that you entered into with the General Railway Signal Company? A. That is the contract of license that I entered into.

Q. And is this the only contract that you made with the General Railway Signal Company? A. It is not. At the same time I executed another contract which provided that when I should have received $65,000 in royalty that the absolute title to the patent should vest in the General Railway Signal and Supply Company, and I executed a bill of sale and deposited it in escrow, as per this agreement.

Q. In acquiring the title of these patents from Mr. Ford did you act for yourself or for someone else? A. For myself.

Q. You had no client or clients? A. No, sir.

Q. And no interest that you were representing? A. No, sir, none whatever.

Q. Purely an individual interest? A. Yes, sir, and I want to say, as far as I know, and I think I know all the facts, no person or individual ever had or now has any interest whatever in these patents excepting Mr. Ford, the inventor, his brother-in-law, who put up the money to take out the patent, myself, and the General Railway Signal and Supply Company.

Chairman Thompson.— Mr. Ford and his brother, their interest has been eliminated.

Mr. Baldwin.— Yes, sir; I say ever have had.

Q. And the only persons or corporations that have now any interest are the General Railway Signal Company and yourself? A. Yes, sir.

Q. And your interest will be extinguished when the amount of the royalty reserved under this agreement reaches the amount of $65,000? A. Yes, sir.

Q. At which time the full legal title to the patent itself will vest in the General Railway Signal Company, and delivery of such patent and assignment thereof will be made? A. Yes, sir.

Q. And what sum did the company pay you for this license at the time it was issued? A. $10,000.

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Q. And that was paid by check? A. It was paid by check on the 29th of December, 1914.

Q. The check of the General Railway Signal Company, was it? A. As I recollect it, the check was of the General Railway Signal Company to Mr. Edwards' order, and he endorsed the check to me.

Q. Mr. Edwards being their patent counsel? A. Yes, sir, or rather his firm.

Q. That was drawn upon a New York bank? A. I don't know.

Mr. Edwards.— The check is here, if you wish it.

(Check produced.)

Mr. Baldwin.— That is the check.

Mr. Lewis offered in evidence check No. A28562, dated New York, December 24, 1914, reading as follows: "Pay to the order of Edwards, Saeger and Wooster, $10,000 General Railway Signal Company, W. W. Salmon, President. To the Hanover National Bank, New York, N. Y."

Chairman Thompson.— You said the 29th.

Mr. Baldwin.— That is the day I got the check.

Mr. Lewis.— This check bears the following endorsement: Pay to the order of Arthur J. Baldwin, Edwards, Saeger and Wooster. Pay Essex County Trust Company, for deposit, signed Arthur J. Baldwin, A. J. Baldwin.

The same was received.

Chairman Thompson.— It has been suggested that you might be related to Lucky Baldwin, by someone on the Committee.

Mr. Lewis.— Attached to the check is a voucher reading as follows:

> "Rochester, N. Y., December 24, 1914. General Railway Signal Company to Edwards, Saeger & Wooster, No. 2 Rector Street, New York City. On account Ford patent matter, as per Edwards, Saeger & Wooster's letter, dated December 22, 1914, $10,000. Approved for payment, George

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D. Morgan, Treasurer. Voucher bearing the following receipt: Received December 24, 1914, of General Railway Signal Company, $10,000, in full of above account, signed Edwards, Saeger & Wooster.

Also, attached is copy of a letter dated December 22, 1914, reading as follows:

"General Railway Signal Company, Rochester, N. Y. Gentlemen: Regarding Ford patents 809,794, and 815,086, and claims made thereunder, we think you had better send us a check for ten thousand dollars, in order that we may have funds at our disposal to adjust the matter on the best terms we can. Upon reaching an adjustment we will report to you in the matter. Yours very truly, Edwards, Saeger & Wooster."

Also, attached, a letter, dated December 18, 1914, addressed to Mr. Salmon:

"In accordance with your instructions, I have further very carefully considered the Hannibal C. Ford patent, 809,794, dated January 9, 1906, and 815,086, dated March 13, 1906. I am still of the same opinion as that expressed to you on the 17th instant, which is that the Ford patent, 815,086, above mentioned, is for such a radical departure in the automatic speed control of railway trains, and contains claims of apparently so broad a scope that regardless of whether or not the so-called Simmen system would be an infringement thereof, a skillful and able patent attorney could at least make it appear to a court that it would be an infringement thereof. If the title to it could be obtained by the General Railway Signal Company for a reasonable price, it should certainly be done. Yours respectfully,

"LED/L Patent Solicitor."

Q. Do you know what "LED" stands for? A. I assume that is Mr. Dodge, the gentleman who came to discuss the patent situation with me.

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Q. You received this check shortly after the date which appears upon its face, did you? A. I think it was the 29th.

Q. What did you do with it upon its receipt? A. I deposited it in the Essex County Trust Company, East Orange, N. J.

Q. And did you make that deposit before you had issued the check to Mr. Ford? A. No, sir, my bank account happened to be good for five thousand dollars.

Q. You had given the check to Mr. Ford before you received the ten thousand dollar check, as appears by its date? A. Yes, sir, and that was apparently certified December 23d.

Q. You knew at the time you gave the check to Mr. Ford that you were to receive on the following or an early date a check of ten thousand dollars from the General Railway Signal Company? A. I did not. I did not know that until the negotiations were closed.

Q. Hadn't there been some substantial agreement reached prior to December 23d on the subject? A. No, sir; I was holding out for a higher price, and I knew they were anxious to get it, and they admitted to me they thought it was advisable for them to have it.

Q. You were holding out for a higher price than ten thousand dollars? A. No, sir. It was upon the limit in which the absolute title should vest in them.

Q. And they finally acceded to your demands? A. No, sir; they did not. We finally reached an agreement.

Q. They said ten thousand dollars was the price they were willing to pay? A. Yes, sir, advance royalties.

Q. That is, to apply upon royalties which may hereafter be earned? A. Yes, sir.

Q. And as such royalties accrue, they will be charged against the ten thousand dollar payment? A. Yes, sir.

Q. Will you give a letter of instruction to the Essex County Trust Company authorizing the expert of this Committee to examine your bank account and make out a transcript thereof? A. I will not. I regard that as entirely personal. I am willing to answer any question in regard to this transaction.

Q. Will you give a letter authorizing an examination of your

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bank account covering a period beginning December 24th, and ending thirty days later? A. I will not.

Q. Are you willing to state any reason why you are unwilling to have your bank account inspected by the expert of this Committee? A. Yes, sir; I regard that as my personal affair. I do not have to prove the truth of my statements. My statements are true, and I have given you the facts.

Q. Assume you had deposited that check in a bank in New York city, you realize, I presume, that the bank could be required by the court upon proper application, to produce its books and disclose your account for the information of this Committee? A. I haven't considered it at all, Senator.

Q. As a legal proposition, have you any doubt of the power of the court to compel the bank to produce its books? A. No, sir; I know the Legislature is all powerful.

Q. And your unwillingness to permit the taking of a transcript of your account is due to the fact that you realize the Committee is helpless to compel its production? A. No, sir.

Q. Because of the fact the bank is in New Jersey and beyond the jurisdiction of the Committee? A. No, sir.

Q. What other reason is there? A. I think that is reason enough. I regard it as personal.

Q. And none of the business of the Committee; is that the idea? A. Of the public. I would rather put it that way. Everything here is public, you know.

By Chairman Thompson:

Q. Do you realize, Mr. Baldwin, that here is a check drawn by the General Railway Signal Company of Rochester, N. Y., at Rochester, in New York, payable to Edwards, Saeger & Wooster, lawyers at New York city, in the State of New York? A. Yes, sir.

Q. Endorsed by them to you in the State of New York? A. Yes.

Q. That you then took it over to New Jersey for the purpose of checking it back to Mr. Ford who was in New York; do you realize that? A. I didn't take it to check it to Mr. Ford. My check had gone to Mr. Ford something like six or seven days prior to that.

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Q. That is the situation, this money before it gets to Mr. Ford, all the parties are in New York, and the check drawn on a New York bank, and you take it in New Jersey and deposit it and draw your check to Mr. Ford on the New Jersey account, and do you realize that the Committee is perfectly justified in demanding an inspection of the New Jersey account under those circumstances? A. No, sir.

Q. Didn't you see some representative of the General Railway Signal Company on December 23d? A. I don't recollect the date. I have no data from which to ascertain.

Q. On the day you drew this check to Mr. Ford, didn't you see a representative of the General Railway Signal Company? A. I don't know.

Q. Isn't it a fact you had a talk and understanding on the 23d of December, that ten thousand dollars was to be paid, and you knew ten thousand dollars was to be paid, and the representative of the General Railway Signal Company left New York on the 23d and went to Rochester, arriving on the 24th, and drew the check on the 24th to you for ten thousand dollars; isn't that the situation? A. No, sir, it is not.

Q. The fact remains the General Railway Signal Company of Rochester drew the check on the next day after you bought it from your own client? A. Yes, sir.

Q. And this man was a client of yours, and you acting for him generally in patent matters? A. No, sir, in specific matters.

Q. You bought this from your own client, knowing you could sell it the next day for ten thousand dollars; isn't that right? A. No, sir. I had made the arrangement with Mr. Ford some time prior to that.

Q. When you made the check, you knew you would get ten thousand dollars the next day? A. No, sir, I didn't know it. I thought I would. I thought I would get something of value or I wouldn't put up five thousand dollars.

Q. You had been told you would, hadn't you? A. No, sir.

By Mr. Lewis:

Q. Where is your office? A. 27 Pine street.

Q. I am afraid we will have to ask you to produce this afternoon your bank deposit book, your cancelled checks and your

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stubs; will you do so? A. No, sir; I don't think I will. I don't think that is within the province of the Committee.

Mr. Lewis.— I ask the Chairman to direct the serving of a subpoena *duces tecum* upon Mr. Baldwin.

Chairman Thompson.— I so direct, to produce his bank books showing the deposits in the Essex County Trust Company, East Orange, New Jersey, and his check books, showing checks drawn, and his cancelled check vouchers, between the 23rd day of December, 1914, and the thirty days next succeeding; also your office register or book account in which you recorded the transaction relating to the purchase and sale of these Ford patents.

Senator Lawson.— You have a copy of the Ford assignment, haven't you?

Mr. Baldwin.— I think there must be one in the files. I am not certain.

Chairman Thompson.— Also any other books of account; your personal books of account, containing personal transactions in reference to this matter. I direct you to produce them now, and what do you say about it?

Mr. Baldwin.— What do you mean; whether I will produce them or not?

Chairman Thompson.— Yes.

Mr. Baldwin.— That is a question of convenience to me. That is the thing that is bothering me.

Chairman Thompson.— You can take Mr. Morse to your office, and he will take a transcript of these, if that is the only thing that is bothering you.

Mr. Baldwin.— No, sir.

Chairman Thompson.— Then I direct you, as Chairman of this Committee, to produce those papers at once, or at two o'clock; will you do that?

Mr. Baldwin.— I don't know. I may and I may not.

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Chairman Thompson.— Then you may issue the subpoena.

Q. Have you a copy of the assignment filed in the patent office in Washington?

Mr. Wilcox.—We can produce the original; Mr. Edwards has it.

Mr. Baldwin.— I can say now I will not produce those papers, to save time.

Q. Are you acquainted with Mr. Wood? A. I met him upon one occasion.

Q. When was that? A. Shortly after his appointment I was in the Public Service Commission outer room and I think Mr. Glacken, one of the Secretaries, said, "Do you know Mr. Wood, Mr. Baldwin?" and I said, "I am glad to meet you, Mr. Wood," and he bowed and passed through, and that is the only conversation I ever had with Mr. Wood in any form.

Q. What other Commissioners do you know? A. I know all the Commissioners from — I think everyone that has been a Public Service Commissioner since that time, excepting Mr. Hayward, I don't think I have met Mr. Hayward to talk with him.

Q. Did you discuss with any of the Commissioners the Simmen patent? A. No, sir.

Q. Did you discuss with any of them the Ford patent? A. No, sir.

Q. Did you discuss with any of them the New York Municipal Railway contract for signalling devices? A. I did not.

Q. Do you know Mr. Banks? A. I never saw the gentleman. I know a number of gentlemen by the name of Banks, but I never saw the Mr. Banks that has been referred to probably in the public press. If he is the gentleman smiling I have not had the pleasure of meeting him.

Q. Did you ever have any telephone conversation with Mr. Wood? A. Never did.

Q. Or with Mr. Banks? A. Never did.

Q. How well do you know Mr. Menden? A. I don't know as I know Mr. Menden.

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Q. Do you know any of the engineers of the Brooklyn Rapid Transit Company? A. I may know some of them, but I don't know Mr. Menden.

Q. Which ones do you know? A. I don't know any of them personally. I cannot recall that I know any of them. I don't know any of them as employees of the Brooklyn Rapid Transit.

Q. Or of the New York Municipal Railways? A. No, sir.

Chairman Thompson.— Do you know Howe of the General Railway Signal Company?

Mr. Baldwin.— No, sir.

Chairman Thompson.— Mr. Johnson, of the B. R. T. or New York Municipal?

Mr. Baldwin.— I don't think I have ever met the gentleman.

Chairman Thompson.— Do you know Mr. Johnson, the sales manager of the General Railway Signal Company?

Mr. Baldwin.— I do not. I never met him.

Q. Can you give us copies of those agreements? A. Yes, sir, I will have copies made for you. You may take these and have them copied in the record and return them to me, if you wish.

Q. Did you ever discuss the sale of these Ford patents with any persons than the officials of the General Railway Signal Company? A. I have.

Q. With whom? A. Mr. Dean.

Q. What is his position and with what company is he connected? A. I don't know, but I always thought it was the Union Company.

Q. When did that discussion take place? A. In January and following this transaction.

Q. That was after you parted with the — A. After I made this contract.

Q. Practically after you had arranged to dispose of the patent? A. Yes, sir.

Q. Were you discussing with him the use of the apparatus or the feasibility of the patent or the sale of the patent interest, or

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what subject? A. Mr. Dean called on me and said that he had discovered from the records in Washington that I was the owner of the Ford patent and that he would like to have me put a price upon the Ford patent, and I said to him, that I was very busy just at that time and I would be glad to see him some other day, but I couldn't at that time because I was just going out, and I told Mr. Edwards about having met him and of my conversation with Mr. Dean, and he said "Find out who he represents, because we want to know in our signal business whether it is the Union or not," and following that time Mr. Dean telephoned me and wrote me and called on me on numerous occasions, but I always dodged the question until finally I wrote and told him I was not in position to give him a price upon the patent, and he asked me if I wouldn't put a price or make some terms upon which he could acquire the right to use the patent.

Q. Before the negotiations with the General Railway Signal Company, did you undertake to sell those patents to anyone else? A. The only thing I did was, as I say, to simply try and get in touch with Herman Westinghouse whom I have known for many years.

Q. You did not reach Mr. Westinghouse? A. No, sir, I did not.

Q. Did you know at the time you tried to reach Mr. Westinghouse that the company had been a bidder for the signalling system of the Brooklyn Rapid Transit Company? A. I knew they had been a bidder, yes, sir.

Q. Did you know which was the low bidder of those various companies? A. I did not.

Q. Did you know anything about the existence of the Federal Company? A. No, sir, and I don't think I did know of their existence until after my negotiations.

Q. I understand you now state that you will not produce, even if subpoenaed, the cancelled checks? A. Yes, sir.

Q. And your bank book? A. Yes.

Q. I want to offer in evidence those two patents, if I may, Mr. Baldwin? A. Yes, sir.

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Q. Does the contract, or do the contracts which you have left with us to be copied and included in the record state all and every consideration for the transfer of that patent to the General Railway Signal Company? A. Every one.

Q. No agreement other than the agreement contained in the documents which you have produced? A. None whatever.

Q. Just one other question, Mr. Baldwin; is it your opinion it was necessary for the General Railway Signal Company to have the Ford patents in order to avail themselves of the Simmen's patent in the establishment of a speed control system? A. In my discussion with Mr. Dodge, which lasted the greater part of a whole day on the patent situation, I came to the conclusion and I think I convinced him that the Simmen's patent under the plan proposed would be an infringement of the Ford patent and I believe they are.

Q. And therefore the Ford patents are necessary for their protection? A. I think they are fundamental patents.

Q. Could the General Railway Signal Company, being the owners of the Ford patent, install a speed control device and system that would be effective without also using the inventions represented and covered by the Simmen patent? A. I am not certain, and I would hate to express an opinion on that.

Q. Did you discuss that with Mr. Dodge at all? A. Yes.

Q. What was Mr. Dodge's opinion, if he expressed any? A. Dodge's opinion was that the Ford patent, the claims were too broad, and the specifications as outlined would limit the claim, and my idea was the opposite.

Q. Will you state whether or not, in your opinion, it was necessary for the General Railway Signal Company to own not only the Ford patents, but the Simmen patents in order to establish a speed control system? A. The cab signal system of the Simmen patent I regarded as valuable from the discussions that I had.

Q. And the combination of the two were a valuable system, and would either be valuable without the other? A. Yes, sir. Each are valuable, but I think theirs would infringe the Ford.

Q. I don't seem to get quite the clear idea of the subject; what I want to know is whether the General Railway Signal Company,

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being the owner of the Ford patents, could operate a speed control system without being the owner of the Simmen patent? A. Not if they embody the devices contained in the Simmen patent.

Q. I mean is it possible for the General Railway Signal Company, being the owner of the Ford patents, to install a system of speed control with an automatic track control on the lines of the New York Municipal Railways Company that would be effective in controlling the speed of trains, without being the owner of the Simmen patent? A. I don't know. I don't believe it could be done. That is my opinion.

Q. Then it is your opinion it was necessary for them to own not only the Ford patents, but the Simmen patents? A. It is, yes, sir.

Q. In your earlier testimony you stated that the inspiration of the Ford patents was found in an accident that occurred upon the elevated system shortly prior to this invention? A. It was newspaper discussion relating to some accident and Mr. Ford brought it to my attention.

Q. The Ford patents and the invention covered by those patents were designed to prevent that character of accident? A. Yes, sir.

Q. And would the inventions covered by the Ford patents, if installed upon the elevated lines in this city, be effective in preventing accidents similar to the accident which inspired the invention? A. They certainly would, but I want to say in that connection that the Ford mechanism, which is merely an illustration of his own idea I believe is impracticable in a sense. One of these patents relates to a mechanical device, and the other an electrical device, but under the Ford patent there is no doubt in my mind that the problem can be solved.

Q. But without the use of the Simmen patent? A. No, sir.

Q. You have to have that also? A. I have not looked at the Simmen patent since the day Mr. Dodge and I were in discussion, a year ago, but my recollection is I recognized the merit of the particular designs and forms utilized by Simmen in accomplishing the result.

Q. The Ford patents and the Simmen patent are equally necessary to each other in accomplishing a practical result, are they?

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A. As I say, I think the Ford was the original, and he has the broad claim, and all he describes is the means, and he does not prescribe what the means may be, and it may be the Simmen means or the Jones system, but each would have to have a license from the Ford patentee to utilize them without infringing.

Q. I notice, Mr. Baldwin, that the contract of the 29th of December, being the contract under which the patents were deposited in escrow, provides that those patents are delivered to Mr. Salmon to be held by him in escrow? A. Yes, sir.

Q. And receipted for by him as trustee, to be held in escrow? A. Yes, sir.

Q. Mr. Salmon of course is the president of the licensee? A. Yes, sir.

Q. And the patents are turned over to him to be held by him until the completion of the arrangement of the royalties amounting to sixty-five thousand dollars? A. Yes, sir.

Q. Is that quite a customary thing, Mr. Baldwin? A. All I desired was simply a third party to hold the patents until the money was paid. If anyone had delivered that contrary to instructions, I still had my rights, and my contract until I had received my royalties, as called for, no matter whether they filed the papers or not.

Q. You regarded Mr. Salmon as sufficiently a third party for your purpose? A. Yes, sir.

Q. Although he was president of the General Railway Signal Company? A. Yes, sir. I had his receipt and the company's receipt and I could claim my money if the company was solvent.

Q. And if the company should become insolvent, you relied upon your ability to recover the patents from Mr. Salmon as the holder in escrow, did you? A. Well, I didn't fear. I feared more whether the system, the perfection of the system would be a success.

Q. Do you know what has been done in the way of developing under the Ford or Simmen patent or both? A No, sir, I have not kept in touch with that, except as I have secondary information in regard to it.

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Q. You don't know of any development along those patents? A. Yes, sir, I say secondary information. I haven't any first hand information.

Chairman Thompson.— Where did you get the secondary information from?

Mr. Baldwin.— From the General Railway Signal Company.

Chairman Thompson.— From whom?

Mr. Baldwin.— Mr. Salmon and Mr. Edwards.

Chairman Thompson.— This morning?

Mr. Baldwin.— No, sir.

Chairman Thompson.— Yesterday?

Mr. Baldwin.— No, sir.

Chairman Thompson.— Last night?

Mr. Baldwin.— No, sir.

Chairman Thompson.— Did you see any of them last night?

Mr. Baldwin.— No, sir.

Chairman Thompson.— Or this morning?

Mr. Baldwin.— I saw Mr. Edwards in my office this morning, and Mr. Salmon as I come in. Mr. Edwards came over and asked if I would not be present in the hearing this morning and he wanted to volunteer all the information there was in reference to the transaction, and I said I would be here.

Q. You are not willing to produce your cancelled checks? A. No, sir.

Chairman Thompson.— Do you think that is a good volunteer, to be willing to come here and not be willing to produce your checks and books, if subpoenaed.

Mr. Baldwin.— Senator—

Chairman Thompson.— You said you dodged Mr. Dean; why did you do that?

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Mr. Baldwin.— Because Mr. Edwards asked me to find out who he represented, and I tried and I said " You make me a proposition, and who is your client? "

Chairman Thompson.— Mr. Edwards asked you to find out who he represented?

Mr. Baldwin.— Yes, sir.

Chairman Thompson.— Who is Mr. Edwards?

Mr. Baldwin.— Legal counsel of the General Railway Signal Company.

Chairman Thompson.— Why were you so confidential?

Mr. Baldwin.— Bear in mind this conversation was after the closing of the one with the General Railway Signal Company, and I regarded myself as a trustee for them in the sense I was not at liberty.

Chairman Thompson.— You were tied up with the General at the time you saw Dean?

Mr. Baldwin.— Yes, sir.

Chairman Thompson.— Why didn't you tell him?

Mr. Baldwin.— Mr. Edwards asked me to find out who he represented, and there was a scrap between the Union Company and the General and he wanted to find out if they were the ones.

Chairman Thompson.—Why did you dodge him if you wanted to find out something from him?

Mr. Baldwin.— Only when he came to see me. I was to give him a price on my patent. I simply dodged the question. You can find out who Mr. Dean represented, if you subpoena him.

Mr. Lewis.— I desire to offer in evidence United States letters patent 815086, dated March 13, 1906, and United States letters patent 809794, dated January 9, 1906.

Both were received.

Chairman Thompson.— Did you win that Sperry suit that you had for Mr. Ford?

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Mr. Baldwin.— Yes, sir, in this sense. We concluded a contract with the Sperry Company whereby the patents were transferred to the Sperry Company, and a royalty of 10 per cent. on all —

By Chairman Thompson:

Q. Is the matter still pending? A. It is all closed up, and I own half the patent and Ford owns the other half.

Q. Was that matter pending on the 23d of December when you made this arrangement? A. Yes, sir, and pending for some time after that.

Q. The first man you met was Finucane? A. Yes, sir.

Q. Did you ever have any other talk with him? A. Two, yes, sir.

Q. You say you had other talk with him? A. Do you mean prior to that?

Q. In relation to this matter? A. No, sir, never did, excepting the time he came in and introduced Mr. Salmon one day.

Q. Was there anybody else's name mentioned in regard to it in your talk with Finucane? A. None, whatever.

Q. You, in talking with Finucane, didn't you talk about the way the Public Service Commission stood on this matter? A. We did not. Senator, let me make it perfectly clear, and I want it to go on the record, my negotiations as to this patent was a patent transaction. No one in public life or semi-public life or anyone other than the persons I have named have any interest directly or indirectly or were in any way involved in the transaction.

Q. I understand that? A. If you understand it, I don't understand the questions you are asking.

Q. Don't expect you can come here and refuse to give the Committee access to details and access to documentary evidence and expect this Committee to take your word as conclusive on these things. I know you, and have for a long time, and I feel very friendly, and I am awfully sorry I am in a position where I have to question you. This is a transaction wherein the Committee has its duties, and it would be extremely negligent if it did not attempt to find out details. You were in a position where you were in a sort of a semi-public position at that time? A. No, sir.

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Q. You knew Mr. Finucane as a man interested in politics, did you not? A. I have known Mr. Finucane as being prominent in politics.

Q. And he was prominent in politics in Rochester? A. Yes, sir.

Q. And friendly to men prominent in Democratic politics in this city? A. I assume he was.

Q. And you were? A. Yes, sir.

Q. And Mr. Finucane was at the time, and you understood it in your talk with him, and you talked with him for the prime purpose of helping his company get the contract for these signals? A. No, sir.

Q. Did you understand this was the biggest signal contract ever let up to that time? A. No, sir.

Q. Did you understand the General Railway Signal Company had practically their entire organization here in New York, as testified to before this Committee by Mr. Johnson? A. I did not.

Q. Do you think if that was so this Committee would think Mr. Finucane had a talk with you without going something into the details as to this being a contract that meant so much to them? A. I don't get the question.

Q. This contract, if they got it, meant a great deal to the General Railway Signal Company, and didn't you talk with Mr. Finucane about that? A. After we got into the discussion?

Q. The first talk you had with Finucane, didn't he then talk to you about the fact they were here trying to get the contract for these signals in Brooklyn? A. No, sir.

Q. And never said a thing about that? A. I don't think he told me he was here for that purpose at all.

Q. As a matter of fact, was not Finucane here for the purpose of using whatever political power he could use for the purpose of bringing this contract about? A. Not that I knew of.

Q. And wasn't there anything said by you that would indicate that? A. Nothing whatever.

Q. You only had one talk with Finucane? A. Two. He came to my office pursuant to my invitation, and he came and sat down and discussed the patents, and he read the claims, and asked if he might take them, and he came in and introduced Mr. Salmon, and

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we had another talk along the same line, as to what I claimed for the patents involving the question of speed control.

Chairman Thompson.— There are some other questions I want to ask, and it is getting so late I will suspend now.

Mr. Quackenbush.— Before you suspend. Your sergeant was at the office after Mr. Shonts had left, and it being the day before New Year's, our offices are all closed up early, and he was about to subpoena Mr. Shonts' secretary.

Chairman Thompson.— I do not care about having Mr. Shonts come before the Committee. It is not that, but I have got to have at least some respect by some folks for the requests of the Committee. This Committee had before it on —

Mr. Quackenbush.— Let me interrupt you and remind you of a conversation I had with you many weeks ago in which I said if your Committee or your counsel would advise me of anybody connected with our company, or any documents you wished, I would produce them or it; but I asked you to let me know so there could be no possibility of any appearance of shunting appearance.

Chairman Thompson.— This has come up in a different way. There cannot anybody go in my county and my village and use influence with me to change the course of this investigation, and I want that emphasized on this record this morning, and that is the reason I have subpoenaed Mr. Shonts. I have obtained the presence of men before this Committee by subpoenaing the office boy to get the big ones. I have reversed the process this morning, because I cannot have those things continued. I do not mean any reflection upon you or Mr. Shonts, but I cannot have this done. Mr. Fuhrer was before the Committee some days ago, and produced a check for five hundred dollars, and at the latter end of his investigation, he was asked, " Do you keep an account in the Astor Trust Company? ", and he said, " I did at that time.", and it is a question in relation to this man working for your company, something about the Northwestern Construction Company. He was further asked, " When did you open the account? A. Three or four years ago. Q. Have you any objection to Mr. Morse examining that account? A. No, sir. Q. Give Mr. Morse an order to examine

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your account in the Astor Trust Company? A. Yes, sir, I will." That was two or three weeks ago. I sent for him this morning, and another of your employees, by the name of Delaney, came in to see me, and said I must have received a letter from a man who lives in my county. And I said, "Yes, I have," and he said, "Do you think you will need to have Mr. Fuhrer come?", and I said, "I want Mr. Fuhrer's account.", and he said, "In the light of the letter you received, don't you think you will excuse him?", and I said, "My own mother cannot prevent me from asking for Mr. Morse to have access to the account.", and the man was in the office at that time, and he did not come down, but he sent the other gentleman down, and he went back, and after he had gone back, a lawyer telephoned me and asked me not to bring Mr. Fuhrer, and I said that was something I could not grant, and Mr. Fuhrer has to come and give this account to-day, and he had agreed to do it over the table. Then Mr. Delaney called me and said he had left the office, and I said he had better produce him or I would subpoena Mr. Shonts. I cannot have these things done.

Mr. Quackenbush.— I think it is unnecessary for me to say to you or counsel that what you say about the correspondence and taking his testimony I do not know anything about.

Chairman Thompson.— That is true, or Mr. Shonts, or none of the officers of the company.

Mr. Quackenbush.— If any of the employees have devious ways of handling their appearance before this Committee, it meets with my disapproval, and they will learn of it from myself, and it was with that idea of the matter I came here. Whenever I say to any Committee of the Legislature of this State or any judicial tribunal that any employees of the company of which I am general attorney will appear, or paper be produced, there is no power in the State will change that.

Chairman Thompson.— I will acknowledge for the record your continuing courtesy and fairness before this Committee.

Mr. Quackenbush.— They will produce him or my resignation will go into the office.

Chairman Thompson.— This is not intended to be a reflection upon you, but I want this man produced.

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Mr. Quackenbush.— I assure you, so far as those gentlemen are in reach, and if I cannot get them, it will be entirely because I cannot have them, but they will be produced if I can get them.

Mr. Lewis.— Try and have Mr. Fuhrer here at 3 o'clock.

Mr. Quackenbush.— Yes, sir.

Mr. Lewis offered in evidence an agreement between Mr. Arthur J. Baldwin and the General Railway Signal Company of Rochester, dated the 29th of December, 1914.

The same was received and marked Exhibit A of this date.

Exhibit A of this date is as follows:

Agreement

THIS AGREEMENT, made the 29th day of December, 1914, by and between Arthur J. Baldwin, of New York, New York (hereinafter termed "Baldwin"), and the General Railway Signal Company, a corporation organized under the laws of the State of New York (hereinafter termed "General Company");

WITNESSETH, as follows:

WHEREAS, the parties did on the 29th day of December, 1914, enter into a certain license agreement, and, whereas, the General Company is desirous of acquiring, under certain circumstances, all the right, title and interest in and to said Letters Patent, and all claims and demands for past infringement;

AND, WHEREAS, the General Company has advanced to the said Baldwin the sum of Ten Thousand Dollars ($10,000.00) as advance royalties under said contract, and the said Baldwin has executed an instrument assigning said Letters Patent and claims for past infringement to the General Company and has delivered the same to W. W. Salmon in escrow;

NOW, THEREFORE, this agreement witnesseth that in consideration of the said advance royalty, the sum of One Dollar and other considerations, the said Baldwin hereby agrees with the General Company that if and when the General Company shall have paid to the said Baldwin as royalties under said

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license agreement of December 29, 1914, or otherwise a sum or sums of money amounting to Fifty-five Thousand Dollars ($55,000.00) over and above the aforesaid Ten Thousand Dollars ($10,000.00), then the aforesaid assignment to the General Company shall become of full force and effect and the said Salmon duly authorized to deliver the same to the General Company.

Upon the delivery of such assignment to the General Company by said Salmon, the said license agreement of December 29, 1914, shall be deemed to be fully satisfied and the General Company released from the payment of any money thereunder.

IN WITNESS WHEREOF, the party of the first part has signed this agreement, and the party of the second part has caused the same to be signed by its duly authorized officer.

ARTHUR J. BALDWIN,
GENERAL RAILWAY SIGNAL COMPANY.
By W. W. SALMON, President.

I accept the delivery of the assignment in escrow subject to the above conditions.

W. W. SALMON.

Mr. Lewis also offered in evidence an agreement between the same parties, under the same date.

Same was received and marked Exhibit B of this date.

Exhibit B is as follows:

Agreement

THIS AGREEMENT, made the 29th day of December, 1914, by and between Arthur J. Baldwin, of New York, New York (hereinafter called "the licensor"), and the General Railway Signal Company, a corporation organized under the laws of the State of New York (hereinafter called "the licensee");

WITNESSETH:

THAT WHEREAS, the licensor is the owner of United States Letters Patent No. 809,794, issued January 9, 1906, for Railroad System, and No. 815,086, issued March 13, 1906, for Railroad System, and of all rights thereunder;

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AND WHEREAS, the licensee is desirous of acquiring an exclusive license to make, sell and use the inventions covered by said Letters Patent;

NOW THEREFORE, the parties have agreed as follows:

1. In consideration of the payments hereinafter agreed to be made by the licensee, the licensor does hereby grant and convey to the licensee the full and exclusive right and license to make, sell and use the inventions of the aforesaid Letters Patent, or either of them, throughout the United States or any of the territories or dependencies thereof.

2. In consideration of the grant of said license, the licensee agrees to pay to the licensor as royalty a sum equal to five per cent (5%) of the gross amount received by the licensee from the manufacture, sale and use of apparatus covered by said Letters Patent, or either of them, the said payment to be made by the licensee within ten days after the receipt of said gross amount by the licensee.

3. The licensee agrees to pay, upon the signing and delivery of this agreement, the sum of Ten Thousand Dollars ($10,000.00) as an advance on account of royalties which may hereafter become due under this agreement.

4. The licensor agrees that he will not part with or place any lien upon the title to said patents or either of them, or allow the same to be encumbered, and it is agreed that neither party shall make any assignment or lien upon its or his interest without the consent of the other party.

IN WITNESS WHEREOF, the party of the first part has signed this agreement, and the party of the second part has caused the same to be signed by its duly authorized officers.

ARTHUR J. BALDWIN,
GENERAL RAILWAY SIGNAL COMPANY.
By W. W. SALMON, President.

AFTERNOON SESSION

Chairman Thompson presiding.

Mr. Quackenbush.—Mr. Chairman, before you take up the examination of Mr. Baldwin, I want to say that immediately upon

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leaving here, after hearing what the Chairman had to say, I went to the office to see Mr. Delaney. Mr. Fuhrer was not yet there, and I told him that they were both of them to be here at 3 o'clock, and to get Mr. Fuhrer. He assured me that he would do it. A few moments ago Mr. Fuhrer walked into the room and started to talk to me, but I preferred not to talk to him. Now, I want it understood that when Mr. Fuhrer was a witness I did not come with him, you will recall. He came back to the office and said that he had been requested to submit his papers, and he said to me that there were some papers of a really personal nature that would embarrass him. I said, "You submit them, and if there is anything in them of that kind, I am sure this Committee and its counsel will not embarrass you in any personal matter, but as far as it relates to your financial affairs, you have got to show them." I assumed that he was doing that until this thing happened now. And while I was talking to Mr. Fuhrer, another lawyer spoke to him and he stepped out. Now, I want it understood, Mr. Chairman, and I might add that since I left here Mr. Shonts telephoned in to the office, as he always done when he is out, and learning that there was this sort of thing — and I am authorized by him to say that, what I said to you before, that whenever you want an employee of the Interborough Company, if I may have reasonable notice, he will be here or he will lose his job with the Interborough, and I want it understood that this case which you have mentioned is one that I shall investigate. There cannot anybody in our company make circles around me, and if this kind of performance has been going on such as you mentioned, I may say, and I am authorized by Mr. Shonts to say, that an example will be made of anybody who is engaged in that kind of business. So long as I am the attorney of this company and have to represent it before this Committee, nobody will go to you or anybody else, and if anybody comes hereafter, you may be sure it is not by my authority or with the authority of the responsible officers of this company. Now, this situation is one that, having talked to these two men, where employees have undertaken to do what I may call the smart Alex act.

Chairman Thompson.— I may say I should not have paid any attention to the incident except when I first sent up there Mr.

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Fuhrer was there, and when efforts made to prevail upon me not to ask him to produce his account, were unavailing, if he had been there and had come before the Committee, I should have said nothing about it. But after it was all over and I had refused three or four times and made it so emphatic I thought it must have been understood, and I found he had left the office, was what angered me. But Mr. Fuhrer has come in and he has produced his entire account just a few minutes ago, and it is perfectly satisfactory to the Committee, and he appears to be a very nice fellow. I think his reticence was largely due to some matters that were of no concern to this Committee at all, and of course I do not care to expose anything, and I did not ask him for that. That was the reason of handing it to Mr. Perley Morse, our accountant, and only using that that was pertinent to our investigation.

Mr. Quackenbush.— I was quite sure of that, and that was what I advised him.

The Chairman.— It may be I made considerable out of nothing, but I do not like to get angry very often, but I am not infallible, the same as everybody else.

Mr. Quackenbush.— I am angry myself about it, sir, and the only thing about it is that it is unfortunate that the company which I represent is judged by the mistakes of people of this kind. I do not mean by this Committee, but publicly, that the idea that our officers or directors had any notion of this kind is absolutely impossible.

Chairman Thompson.— So your company will feel that the Committee is all right now, we won't need Mr. Shonts, and you may say to him that, and we wish Mr. Shonts and you both a happy new year.

Mr. Quackenbush.— The same to you. I appreciate the time. I did not mean to impose on you.

ARTHUR J. BALDWIN on the stand.

Examination by Mr. Lewis:

Q. Mr. Baldwin, you have been served with a subpoena to produce certain cancelled checks, vouchers, and so forth? A. Yes, sir.

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Q. Have you them with you? A. I have not.
Q. Will you produce them? A. I purpose not to.
Q. Do you refuse? A. I do.

Mr. Lewis.— I ask the Chairman to direct the witness to produce the documents mentioned in the subpoena *duces tecum*.

Chairman Thompson.— I direct you, and I call your attention to your bank book on the Essex County Trust Company in New Jersey, containing your account between December 20, 1914, and January 20, 1915, together with cancelled checks, check stubs on the same account, between the same dates, and all books of accounts and records relating to the purchase and sale of the so-called Ford patents by you. Are they in your possession in your office?

Mr. Baldwin.— I have no books relating to the Ford purchase, patents, further than the bank books.

Chairman Thompson.—Are those in your possession in your New York city office?

Mr. Baldwin.— They are not.

Chairman Thompson.— Where are they?

Mr. Baldwin.— I think they are in Jersey. I don't know whether my bank book is here. I couldn't tell. I have not looked it up.

Chairman Thompson.— Have you the checks here?

Mr. Baldwin.— Cancelled checks may be in my office, but I am not certain.

Chairman Thompson.— Then I direct you to produce them.

Mr. Baldwin.— I am willing to produce any particular check or voucher or anything that the Committee may direct, but I have produced everything that in any way relates that I have in my possession to this transaction in question, namely, the sale of the Ford patents. I regard everything else as personal, and it is not showing my contempt for the Committee. It is simply an insistence on my personal rights.

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Chairman Thompson.—And you still refuse?

Mr. Baldwin.— Yes, sir. Well, I wish the Committee a happy new year.

Chairman Thompson.— Of course you are not excused.

HANNIBAL C. FORD, sworn as a witness, testified as follows:

Examination by Mr. Lewis:

Q. Where do you live, Mr. Ford? A. Jamaica.

Q. What is your business? A. Electrical engineer.

Q. Have you from time to time made inventions, and applications for letters patent? A. Yes.

Q. Tell us about that, will you — what have you invented? A. I have invented time recorders, typewriters — about five or six patents on the Smith Premier typewriter, and railway signal patents, gyroscope compasses, plotting and tracing devices for use on battleships.

Q. Are you the Hannibal C. Ford named in letters patent issued by the United States Patent Office No. 809,794? A. I am.

Q. And letters patent No. 815,086? A. I am.

Q. Tell us what you have done since the date of the issue of these patents in an effort to market them. A. The first effort I made I am not sure whether it was after the patent was issued or not. I went to the Interborough and interviewed Mr. Laty, and was referred by him to Mr. Waldon. I did not receive very much encouragement at that time.

Q. Don't you remember what he said to you? A. I don't remember.

Q. Do you remember when that was? A. I might be able to find out when that was by my notes.

Q. You are not able to state? A. No.

Q. Are you able to state whether that was before or after the patent was issued? A. I could not state that. I think it was after the patent was issued, because I think I took the patent with me.

Q. Who else did you see in connection with the Interborough? A. No one else.

Q. Except Mr. Laty? A. And Mr. Waldon, their signal engineer.

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Q. Do you remember what either of them said to you on the subject of the patent? A. Not very clearly.

Q. Give us your best recollection. A. Well, the main thing was that it was too elaborate and too comprehensive a system; that it was not simple enough with what they were able to get along with at that time. They had some sort of a scheme which was able to do what they needed. He called my attention to the fact that the loading problem, if I remember right, was the thing that was holding up the traffic more than the block signal. That it was the question of loading the trains.

Q. Did he express any opinion to you as to the value of your patent? A. I don't remember.

Q. Did you ever return to the Interborough after that time? A. No.

Q. Did you make any effort to deal with any other company? A. Yes. I brought it to the attention of the General Railway Signal Company.

Q. When was that? A. That was, I should say, between 1908 and 1910, somewhere between those two years, I should say. It was about the time I returned to New York from Syracuse.

Q. Some five or six years ago? A. Yes.

Q. Who did you see in connection with the matter at that time? A. I believe I saw Mr. Salmon and was immediately turned over to his engineer. I forget his name.

Q. Dodge? A. No,— Mr. Howe.

Q. Did you discuss the matter with Mr. Howe? A. They were interested in the matter to a certain extent, but stated it would have to be worked out, as I knew very well it would have to be — details would have to be worked out to make it commercially practicable, and they suggested that I should work out some further details and present to them. I know at the time I was considering possibly getting a position with them to work the thing out on salary for them, but nothing was done with that. I did not work it out and did not go back to them with anything.

Q. Was anything said at that time by Mr. Howe as to the value of the patent which you had and disclosed to him? A. I can't remember what was said. I know I have always had an idea of the value of it broadly and knew that the necessity of working it out had limited that to a certain extent, but expected that it would

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be worked out, and a signal system would be worked out under that broad idea. What I started to say was I don't know that anyone ever discouraged me in that belief, so I do not think that he disagreed with that to any extent.

Q. Did you name any price to the General Railway Signal at which you would be willing to sell the patent? A. No, I don't remember.

Q. Did you name any price to the Interborough people? A. No price was named.

Q. Was there any discussion as to price? A. I don't remember of any price being stated.

Q. Was anything said as to the pecuniary value of the patent? A. I remember no figures in connection with any prices.

Q. Anything said about its being valuable or of little value? A. I do not remember of anything said about its being of little value. That is what I was trying to explain. Nothing in the negotiations led me to believe it was not a valuable thing, excepting it might not be available to them at the present time. They wanted more work done on it.

Chairman Thompson.— It was not perfect?

Mr. Ford.— Does not cover details that were to be used. It was simply made, a diagrammatic scheme, as the embodiment of an available idea. It was not available as it stood to manufacture. Well, I thought it was available. What would amount to an invention to one would not amount to an invention to one skilled in the art. I think one skilled in the art would put it in shape under the broad idea, although it might involve other inventions.

Chairman Thompson.— Well, they did not have any use for it?

Mr. Ford.— They apparently were not enough skilled in the art to work out a scheme along that line.

Examination resumed by Mr. Lewis:

Q. What did they say about the feasibility of the adoption of the principle? A. Well, I think that was always acknowledged.

Q. The principle as expressed in your claim? A. The principles as expressed in the claims.

Q. They acknowledged the availability of that principle? A. Yes, sir.

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Q. And the feasibility of working it out — did they say anything about the time being right for the installation of any such system or remote — anything to indicate the purpose on their part to either then at the present time or in the future? A. That idea has been expressed, but I don't know whether it was by the General Railway or who it was.

Q. Which idea do you mean? A. The idea of not being right for it. It is so long ago I cannot remember the details of this conversation only in a general way.

Q. You don't remember whether the General Railway Signal Company said anything of that sort? A. I do not.

Q. To whom did you next offer the patent? A. I mentioned to different people at different times that I had these patents. I don't know as I directly offered them for sale to anybody.

Q. Do you recall the names of any of those people? A. Mr. Roberts of the General Electric Company.

Q. Who is he? A. General engineer of the New Haven.

Q. Now of the General Electric? A. He thought I might be able to sell those patents. He believed they were of very considerable value. He is a civil engineer.

Chairman Thompson.— You never did sell them?

Mr. Ford.— No.

Chairman Thompson.— Never heard from him any more?

Mr. Ford.— I had one letter from him in which he said he believed there was a market for them; but it drifted along for a year.

Examination resumed by Mr. Lewis:

Q. Any prices named by him? A. No prices named.

Q. Anyone else? A. The next one I mentioned or offered them was to Mr. Baldwin.

Q. When was that? A. The latter part of November or first of December.

Examination by Chairman Thompson:

Q. I thought you told me a little while ago it was early in December? A. I think it was.

Q. Didn't you tell me you knew it was? A. No.

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Q. Have you talked with anybody since you talked with me? A. Yes.

Q. Didn't you tell me you thought it was early in December? A. I don't think so.

Q. Have you talked with somebody that told you Mr. Baldwin swore it was in the latter part of November or early in December, since you came in here? A. No, I have not.

Q. Is your recollection any better now than it was then? A. I said it was when I got back from Chicago. I dated that from the time of my resignation from the Sperry Company. First of December. Now I recall it was two or three days before that.

Q. You told me in there, there wasn't anything that you could fix the date. A. That would not fix the date.

Q. But you fixed it all right since you talked with somebody, since you talked with me? A. I have not fixed it any better than I have before.

Q. I think you have. A. I don't think I have.

Examination resumed by Mr. Lewis:

Q. What is your recollection now of the definite time of your first talk with Mr. Baldwin? A. It was within a very few days of the first of December or some time along in the fore part of December, at which time I was in very frequent conference with Mr. Baldwin, as my attorney, on another matter.

Q. How did this subject come up, the speed control proposition? A. I can't recollect.

Q. You were not there in connection with the speed control? A. No, sir, not at all. We were talking of inventions of different kinds.

Q. What were you talking about? A. My relations with the Sperry Gyroscope Company.

Q. What were your relations with Mr. Baldwin? A. He was my attorney.

Q. In what matter? A. In the matter of protecting my interests.

Q. Was he your general counsel in all matters? A. In that matter.

Q. In that matter only? A. That's all. He did also—he represented me in the matter of founding a new company which was later formed.

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Q. For what purpose? A. For the development of my inventions.

Q. What inventions? A. The Ford Marine Appliance Corporation.

Q. What inventions? A. Inventions relating to battleships and fire and marine appliances.

Examination by Chairman Thompson:

Q. What do you do to battleships? A. Fire control apparatus.

Q. Make them more effective? Have you got any evidence that they were successful? A. I can give you plenty of evidence.

Senator Foley.— Anybody that knows anything knows the gyroscope is successful.

Mr. Ford.— The Sperry gyroscope is a patent in my name.

(At this time Senator Foley objects to Chairman Thompson's questions as being unfair, and to the insinuation that this man was not an inventor of successful appliances.)

Chairman Thompson.— I don't know what he is an inventor of. I never saw him until a half an hour ago. I know he does remember things better since I saw him and since he came out here.

Senator Foley.— I don't know about that. That was between you and him.

Chairman Thompson.— We won't have any question about inferences. I do not care to raise any. We will use this witness perfectly straight, and if he has invented any new inventions, we are glad to have you show they are successful.

Mr. Ford.— My remembrance was that it was — when I was in your office my remembrance was it was between the first and some time in the middle of December. Now, in thinking it over afterwards, it comes to me it might have been two or three days before. That is the only difference.

By Chairman Thompson:

Q. Now proceed. A. I kept within a limit I am sure of before. Now I have enlarged the limit slightly.

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Q. If you want to talk about your gyroscope, let's talk about it. Did you ever call that to the attention of Henry Ford? A. He might have something to do with it.

Examination resumed by Mr. Lewis:

Q. Was he your attorney in any other matter than in the formation of the company, and in the protection of your interests in the gyroscope matter? A. No.

Q. What subjects were under discussion which led you to mention the fact that you had speed control patents? A. I suppose the general inventions in general that I had been engaged on. In connection with my work of value to the Sperry Company, that we were negotiating.

Q. Was it any part of your plan to transfer those patents, the speed control patents, to the company which you were planning to form? A. That was mentioned at one time.

Q. Well, what did Mr. Baldwin say when you told him you had speed control patents? A. He wanted me to show them to him — thought they would interest him.

Q. Asked you to? A. Yes. I think after I told him, he said he thought he might be able to market them for me.

Q. Was there anything said about the installation of signal systems anywhere? A. I told him — I don't know just what you are getting at.

(Question repeated.) A. It is not clear.

Q. Was anything said in that conversation about any company being about to install a signal system anywhere? A. No, I don't know of anything of that kind.

Q. Was there anything said about a signal system being about to be installed in the lines of the New York Municipal Railway Company? A. I cannot recall enough of the conversation to know. There may have been.

Q. Or the Brooklyn Rapid Transit Company? A. I will have to — I don't know as I can tell. I can't remember what was said. This conversation was over a year ago.

Q. It related to a matter of importance to yourself, was it not? A. We talked about the installation of the present signals on the Interborough. I told him what steps I had taken to sell the patent.

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Q. Did you tell him you had tried to sell it to the Interborough? A. I told him I had tried to sell it to the Interborough.

Q. Did you tell him you had tried to sell it to the General Railway? A. Yes, sir. Told him the history of the patent.

Q. What did he say about that? A. I don't remember what he said.

Q. Say anything about the General Railway Company? A. Nothing in particular.

Q. Anything, whether particular or not, do you recall anything that he said? A. I don't recall anything in particular. We simply discussed the chance to sell them.

Q. Was the General Railway Signal Company mentioned? A. Yes, I think it was.

Q. Who mentioned it first? A. I think I mentioned it first, probably.

Q. What did he say? A. I don't remember.

Q. Do you remember what you said? A. I told him I had tried to sell it to the General Railway Signal Company.

Q. What did he say? A. I don't remember what he said.

Q. Did he say he knew the General Railway Signal Company people at all? A. I don't recall.

Q. Did he say he knew Mr. Salmon? A. I don't recall that he did.

Q. Did he say that he knew Mr. Howe? A. I don't recall.

Q. Was Mr. Salmon's name mentioned? A. Yes. I mentioned his name.

Q. Did Mr. Baldwin mention his name? A. I can't recall.

Q. Was Mr. Howe's name mentioned by Mr. Baldwin? A. I can't recall.

Q. Did Mr. Baldwin say anything about knowing Mr. Finucane? A. I can't recall that he did.

Q. Was Mr. Finucane's name mentioned by either of you? A. I don't remember that it was.

Q. Did Mr. Baldwin say he knew Mr. Menden of the Brooklyn Rapid Transit Company? A. I don't remember the name.

Q. Or Mr. Williams, president of that company? A. I can't remember any people connected with it.

Q. Is it probable that any of those named were mentioned, do you think? A. I couldn't say, it might have been.

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Q. Did he tell you anything about the probable market for your device or your patent? A. He apparently did not know much about it when I brought it up to him. I explained what the system did, and he thought it was available and probably would be a market.

Q. Did he say he did not know anything about those things? A. I say it was apparent from the explanations I had to make, to make it clear to him.

Q. Did he say anything about the value of the proposition or the patent or the idea or the invention? A. He thought it was a valuable patent.

Q. What did he say on that subject? A. He thought he would be able to sell them.

Q. Did he mention any price at which he might be able to sell them? A. I don't know whether any price was mentioned.

Q. What did he say about it? A. I can't tell what he said.

Q. What did you say? A. Gave him a price.

Q. Did you give him a price? A. Yes.

Q. That day? A. Which day? It was mentioned at different times.

Q. You are talking now about the time you first mentioned it to him? A. No. There was no price made at the first mention.

Q. Nothing said then about the price at which you would sell the patent? A. No, sir.

Q. Had you in mind any price for which you would be willing to sell them at that time? A. I suppose so.

Q. What was it? A. I don't know.

Q. You don't remember now? A. It was a matter of discussion. My brother-in-law had a half interest in that.

Q. What was his name? A. Conibal.

Q. What is his first name? A. G. W.

Q. Where does he live? A. I live with him.

Q. Same address you have given here? A. Yes, sir.

Q. What is your street number? A. 15 Brantford street, Jamaica.

Q. How did your brother-in-law happen to have a half interest in that? A. He paid the expenses and cost of the patent.

Q. And do you know what they amounted to? A. In a general way.

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Q. How much? A. About five hundred dollars.

Q. And for that he had a half interest? A. That is the usual way.

Q. And you retained the other half, and did you have the right to sell it to Mr. Baldwin without consulting your brother-in-law? A. No.

Q. Anything said to Mr. Baldwin on that subject at the time the conversation took place? A. Yes. I explained to him I was acting — when the deal was finally made I explained to him.

Q. What did he say then? A. He wanted to be sure that was the fact, that's all. They had never been assigned. The half interest had never been assigned as a matter of record. He took that chance.

Q. Did he make any search of the records in the Patent Office to see whether they stood in your name? A. Yes.

Q. As a matter of fact, did the patent stand in your name? A. Yes.

Q. And your brother-in-law's assignment of one-half interest had never been recorded? A. Had never been recorded.

Q. Was there an actual written assignment to your brother-in-law of a half interest? A. I couldn't say. There might have been.

Q. Do you remember of executing an assignment of a half interest in the patent? A. I don't remember. We had a number of deals together at times.

Q. You would remember it if you ever gave it to him? A. I would have, I think. I don't think I did.

Q. As a matter of fact, your brother-in-law had a right to a half interest in the patent which he had never exercised? A. Yes, sir.

Q. And for that he had paid the expenses for patenting, the issue of the patent, which may have been as much as five hundred dollars? A. Yes.

Q. Is that as close as you are able to estimate the amount that has been paid out? A. Yes, about as close now.

Q. When did you next see Mr. Baldwin after this first conversation? A. I saw him frequently — nearly every day for several weeks.

Q. And did you discuss with your brother-in-law the proposition to deal through Mr. Baldwin? A. Yes.

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Q. And what was said between you and your brother-in-law on that subject? A. Well, we discussed what we should charge for them.

Q. What was the amount? A. We discussed two different amounts among ourselves. I believed we talked ten thousand, and then finally decided to take five thousand for it.

Q. Was that without any further discussion with Mr. Baldwin? A. I suppose we saw him in the meantime.

Q. Your original price was ten thousand? A. I don't know that we ever gave him the price of ten thousand. I know we discussed that price between ourselves, I and my brother-in-law.

Q. And did you name that price to Mr. Baldwin? A. I couldn't say whether I did or not.

Q. Have you any recollection on the subject? A. I can't tell.

Q. Did you feel it was worth ten thousand? A. Yes.

Q. And you subsequently reduced the price and sold it for five thousand? A. I was willing to take five thousand.

Q. Was that reduction brought about by something that Mr. Baldwin said? A. No.

Q. How was it brought about? A. By concluding that five thousand was what I could get.

Q. Well, what had led you to that conclusion if you had not discussed it with Mr. Baldwin? A. The patent was eight years old, and I had not sold it in eight years, and I was very much interested in other lines of work — had been so much interested that I had not been able before that to sell it at all. I had not tried, as a matter of fact, and concluded it was better to sell it for five thousand and get the money then before Christmas than to keep it any longer.

Q. Your first thought was that it was worth ten thousand? A. No. I always thought it was worth more than that.

Q. But the first time you discussed the proposition of turning it over to Mr. Baldwin, you and your brother-in-law agreed it was worth ten thousand? A. I don't know that is so. I think that figure was discussed.

Q. Well, was that the conclusion, that it ought to bring you ten thousand dollars? A. I don't know that the conclusion that it ought to bring had any connection with what it was worth.

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Q. You say it was worth a good deal more than ten thousand? A. Yes.

Q. You did not expect to get what it was worth, did you? A. No.

Q. And you did expect to get what you could obtain for it? A. Yes.

Q. Now, you expected to let it go at that price? A. Yes, sir.

Q. Now, isn't it true you and your brother-in-law said you could get ten thousand dollars if you were to ask that price? A. No.

Q. It is not true? A. It is not.

Q. Did you reach the conclusion that you would not be able to get ten thousand dollars without conferring with anybody else, or did you confer with Mr. Baldwin on the subject, and find out from him that it was not worth ten thousand dollars? A. Never found out from him it was not worth ten thousand dollars.

Q. Well, did you find out from him that he would not pay ten thousand dollars for it? A. Yes.

Q. When did he tell you that? A. I couldn't say.

Q. Well, when with reference to your first meeting? A. Some time after that.

Q. How long? A. I don't know.

Q. This negotiation lasted but a few days? A. This lasted — probably covered the question of a month.

Q. Then it must have been some several days before December? A. I was seeing him occasionally before this time, and it was mentioned.

Q. When did you first take the patents in to him? A. I couldn't tell you.

Q. The first time? A. I couldn't say. I was seeing him frequently, and occasionally this was mentioned, and I would see him three or four times, and this would never be mentioned at all, and occasionally it would be brought up.

Q. Weren't you rather anxious to sell them? A. Yes.

Q. And when he suggested to you that he might find a market for them, weren't you impressed with the idea that was an opportunity for you to dispose of them? A. Yes.

Q. You were not in need of money that it was desirable to take them in promptly? A. Always.

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Q. Why didn't you take them in the first time you got the information? A. I may have. I don't remember whether it was the first, second or third time. I know the matter dragged along, and it was not actively pushed between Mr. Baldwin and myself.

Q. It did not drag along? A. We had other things to consider, and Mr. Baldwin is a busy man, and I was taking a large amount of his time in other matters.

Q. Your testimony is the negotiations first commenced on the 1st of December? A. Yes.

Q. And you got your check for five thousand dollars on the 23rd? A. Yes.

Q. So it did not drag along very much? A. There were very few negotiations regarding it. It came rather quick when the thing was sold.

Q. Now, who was the first one to mention the five-thousand-dollar price? A. I don't know.

Q. Did you mention it? A. I presume I did.

Q. What did Mr. Baldwin say? A. I don't remember.

Q. Don't you remember? A. I don't remember.

Q. Did he say it was too much? A. I don't remember.

Q. Did he offer you any smaller sum? A. No.

Q. Did he say he would accept it and take it and pay that sum for it the first time you mentioned the matter to him? A. I don't know whether that was the first time it was mentioned or not.

Q. Well, when did he say he would take it and pay you five thousand dollars for it? A. Possibly within a few days of the time he paid for it.

Q. Wasn't it on the day that he paid for it? A. I think not.

Q. When was it with reference to the day? A. I think within a few days before that.

Q. How many? A. Not over two or three days.

Q. Not more than two or three? A. No.

Q. May it not have been the day before? A. Might have been.

Q. Isn't that the best of your recollection now? That it was the day before? A. No, I couldn't say what day it was.

Q. Where were you? A. I can't recall where that conversation took place.

Q. At your home in Jamaica? A. No, it was in New York.

Q. At his office? A. It may have been.

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Q. Where else might it have been? A. It might have been at the Lawyers' Club. It might have been some other place, or some restaurant. We went out to lunch together frequently — occasionally.

Q. What did you say when he said he would give you five thousand dollars for it? A. I said I would accept it.

Q. What? A. I think I went home and saw my brother-in-law and told him we could get the price we asked.

Q. Did you tell Mr. Baldwin you would accept this before seeing your brother-in-law? A. I don't know.

Q. Can't you remember again? A. I can't remember the details. I had a great many other things on my mind at that time, and this did not take as much of my attention, no doubt, as a business man would give it.

Q. A little matter of five thousand dollars is not so important? A. Yes, but it is not everything. There were larger interests I was considering.

Q. Wouldn't five thousand dollars come in pretty handy in negotiation of the larger interests? A. Yes, that is what I thought. One of the reasons I accepted it.

Q. You did not grab for it very swiftly? A. I took the five thousand.

Q. But you took a long time to think it over? A. We were not thinking it over, much of this time. There was very little negotiation over the matter.

Q. What was said about his taking it if anything else happened? A. I don't know as anything in that line.

Q. Say anything about his plans as to where he would dispose of it? A. No.

Q. Did he say anything about individuals to whom he had offered it or negotiated for its sale? A. No.

Q. Did you know at the time you turned it over to him that he had already sold it? A. No, sir.

Q. When did you first know of this fact, that he had sold it? A. I saw it in the paper. It is comparatively recently. I don't know that I know it now, except it is in the paper.

Q. You did not know that he had sold the patents except as you have seen it in the newspapers? A. That's all.

Q. Never knew it? A. Never knew it.

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Q. Brother-in-law knew it? A. What he has seen in the paper.

Q. That is the only information he has? A. That is all.

Q. Did you know that the General Railway Signal Company had submitted a proposition for installing some signal system on the B. R. T. lines? A. No.

Q. Had not kept in touch with the signal business? A. No.

Q. Lost interest in the subject? A. Why, you might say so, although not actively.

Q. Although you had plans that in your opinion were worth a good deal of money? A. Yes, sir.

Q. And available for use in the signaling system? A. Yes.

Q. But you had not paid any attention to them? A. Very little. Saw things that come out in the paper.

Q. That did not come out in the paper, anything about the Ford patent, until the last two or three days? A. You were speaking about the signaling contract, and so on. I did not know anything about what was being done in that.

Q. Did it occur to you that your device might be of use in the installation on the B. R. T. lines? A. Why, frequently, from time to time. I don't know as just about that time. I have often thought — of course, I told my friends I had these patents which were available for that sort of thing. I presume I mentioned it to different people, and did think of it in that connection.

Q. Where were you when the sum of five thousand dollars was paid to you? A. In Mr. Baldwin's office.

Q. Mr. Baldwin's office? A. Yes, sir.

Q. What was said that day? A. He gave me a check and wished me a merry Christmas, I believe, or something of that kind.

Q. He was as good natured then as he is to-day? A. I thanked him "and I hope you have."

Q. Were you pleased to get a five thousand check in exchange for ten thousand dollars' worth? A. I was glad to get the five thousand, and I told him I hoped he would make a fortune out of it.

Q. What did he say? A. He said he hoped he would.

Q. Did he tell you he had already sold the patent to the General Railway Signal for ten thousand? A. No, he didn't.

Q. Did anything happen to lead you to infer that he had disposed of the patents before he paid you for them? A. No.

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Mr. Baldwin.— I would like to have you make it manifest that I did not testify I had sold them. I hardly think it is fair to make such insinuations. This is my client.

Mr. Lewis.— I did not want to make any insinuation. I want to know what this witness knows about the fact, whether they had been sold. If he knows about the fact if they had been sold.

Mr. Ford.— I can testify that I did not know.

Mr. Lewis.— I do not mean to deal unfairly with the witness or you, Mr. Baldwin. I simply want to test his knowledge as to what occurred and whether he knew anything about a deal with the General Signal.

Chairman Thompson.— Have you got through with the witness?

Mr. Lewis.— I think so, for the present.

Examination by Chairman Thompson:

Q. You did not know, as I understand you — you did not know what Mr. Baldwin was going to do with your patents? A. I didn't know.

Q. He simply talked with you about buying them? A. He bought them.

Q. He never had any conversation with you about what he was going to do with them? A. He hoped he would be able to sell them.

Q. He did not give you any of the detail? A. No.

Q. Or any information? A. No information whatever.

Q. It was simply a case of buying these patents? A. Yes, sir.

Q. Fixed a price of five thousand dollars on them? A. And he said he was buying them not as my attorney. He hoped I would not think he represented me. He was buying them for himself. I told him I understood he was not my attorney. It was a straight-out sale.

Q. Did you have any interest in what he recovered? A. No interest whatever.

Q. No agreement? A. No agreement.

Q. It was a straight-out sale? A. Straight-out sale.

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Examination resumed by Mr. Lewis:

Q. Is that the check he gave you for it? A. That is my signature.

Examination by Assemblyman Burr:

Q. Were you glad to get that? A. I was glad to get it.

Q. Perfectly well satisfied to see him make a profit on it? A. Perfectly well. I have seen other men make a great deal bigger profit.

Q. You have sold patents before? A. Yes, sir.

Q. And you always felt they were worth a great deal more than you got for them? A. No, not always. I sold one that was not worth what it brought.

Examination by Chairman Thompson:

Q. Did you ever see the Simmen patent? A. I saw it.

Q. When? A. I heard that the patent came out. I look over the patents.

Q. Did it impress you? A. I couldn't give an opinion.

Q. You never had any information on which you could give any opinion? A. I may have had information by reading the patents, but I don't recall what the patents were.

Q. You are not any relation to Henry Ford? A. No, sir.

Q. You are a philanthropist? A. No.

Q. Have you any objection to the Committee tracing this check to your bank account? A. What I did with the money?

Q. Yes. A. You mean you want me to give you —

Q. Permission to take that from your bank account. A. I don't see that is necessary. I can supply you with the information. If you want the information, I prefer to supply it.

Q. Let our expert go to the bank? A. No.

Q. You promised that in the other room. A. I did not understand it in that way, that I was called on to exhibit my private bank account.

Q. Have you got a public bank account? A. But I can supply you with the information where that check went to.

Q. What bank did you deposit this in? A. Kings County Trust Company.

Q. Where is that located? A. Jamaica.

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Chairman Thompson.— I direct a subpoena for this gentleman's account in the Kings County Trust Company be issued.

Senator Foley.— Why don't you accept the explanation?

Chairman Thompson.— Because we have a right to his bank account.

Mr. Ford.— I can give you the document.

Chairman Thompson.— You have asked me about casting insinuations, and for the purpose of not casting insinuations on Mr. Baldwin, we having him on the stand and asking for his bank account, I make the same request of this witness, because I want to treat them both alike. That is the only reason. I am not going to say this witness's word will be taken and Mr. Baldwin's word will not be taken to-day.

Examination by Mr. Lewis:

Q. Are you willing to produce it? A. I am willing to produce the check.

Q. Do you authorize the bank to permit the expert of the Committee to inspect your account? A. I don't think that is necessary.

The Chairman.— We have a right to your bank account, to trace this check and see what you did with the money. If you do not consent to it, we will issue a subpoena to the bank.

Mr. Ford.— There is no objection to it. It seems as though it is uncalled for.

Chairman Thompson.— Now, if I have made any insinuations you object to, I will withdraw them. I have a lot of respect for inventors. Sometimes they invent things that are not any good, and sometimes they do the other way. But your speed control proposition, I think we understand that you were not giving it very much consideration. You tried it with the Interborough and they had not done anything with it.

Mr. Ford.— The negotiation of it I never gave much consideration.

Chairman Thompson.— You tried four or five years ago and you never got any help from anybody?

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Mr. Ford.— No.

Chairman Thompson.— You did not have any more than five thousand dollars' worth of faith in it, and when it came to the actual taking of the check for five thousand dollars, you were willing to eliminate your interest in it, and you parted with it?

Mr. Ford.— Yes.

Chairman Thompson.— You may be excused.

Mr. Simmen.— I want to make a statement — just a request.

Chairman Thompson.— We won't hear any statement.

Mr. Simmen.— I will outline it to you and you can strike it off the record. Myself and my company have been under a cloud for nearly two weeks, and I want to know when the Committee will hear us. Isn't that a fair question?

Chairman Thompson.— That is a fair question.

Mr. Simmen.— Could you outline to me when? I am doing other work than attending Committee hearings.

Chairman Thompson.— When is your Committee hearing?

Mr. Simmen.— I mean this Committee hearing. I have other work besides this Committee meeting. I would like to know some definite time when you will hear me. Of course I know you will have trouble to state that positively.

Chairman Thompson.— There is nobody wishes that as much as the Chairman. You are one of these inventors. Now, invent some way to expedite this hearing, because we are all just as anxious to get back as you are.

At this point somebody stated that he was Mr. Simmen's counsel, and that he came from Canada, and been here two weeks, and he further states, "If you will state a time which I think is fair, we will come back."

Chairman Thompson.— We will set a time just as quick as we can get to it on Monday morning at 11 o'clock.

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Mr. Wilcox.— Can I go on Monday morning, and we want to be here on Monday morning if you want us, and if you don't want us, we want to know that.

Chairman Thompson.— We will go right along on Monday morning.

Mr. Salmon.— Do you want to know anything about the speed control?

Chairman Thompson.— We do.

Mr. Salmon.— Why not put on Mr. Howe?

Chairman Thompson.— We have our own man.

Mr. Wilcox.— I would like to say that Mr. Dodge, counsel for the General Railway Company, is here.

Chairman Thompson.— We have not asked him to be here.

Mr. Wilcox.— Well, we have. You asked a question a moment ago, whether anybody wanted to go on to-day, and I am answering that. Mr. Dodge has a case on. He will come back on Monday morning, but it will greatly facilitate it if you can go on to-day.

Chairman Thompson.— We won't call Mr. Dodge until we have concluded the examination of Mr. Salmon.

Mr. Wilcox.— I would say Mr. Salmon is here and perfectly willing to go on with Mr. Dodge.

Chairman Thompson.— We could not get through with Mr. Salmon in a half hour.

Mr. Wilcox.— Of course you know how many questions you have to ask him.

Mr. Simmen.— Our company to-day in the eyes of the public are grafters, and so am I. I say that is not fair. Give us a chance. You know the facts.

Chairman Thompson.— You will get your chance.

Mr. Simmen.— That is all right — a chance when the clouds roll by.

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Chairman Thompson.— We sent for you and we want you here, and we want you to go on the stand and tell your story, and we want Mr. Salmon, except that we have not heard from Mr. Dodge, and I do not intend to change the Committee's idea of how the witnesses should be sworn in order to accommodate Mr. Dodge, when we have not asked him to come.

Mr. Simmen.— The fact remains that your Committee have published certain facts.

Chairman Thompson.— We have not published any facts.

Mr. Simmen.— I beg your pardon, you have published certain facts that are private within the Committee. If you wanted to hold us off week after week, you should not have published those.

Chairman Thompson.— We are not going to hear those things.

Mr. Simmen.— We have a right to be heard.

Chairman Thompson.— But you have not any right to be heard when some one else is being heard. The Committee is not publishing any facts. There have been no facts printed except those shown from the books.

Mr. Simmen.— There have been some facts furnished with a lot of insinuations.

Chairman Thompson.— We won't hear you any further.

Mr. Simmen.— I only ask, if you please, hear me soon.

Chairman Thompson.— I hope everybody will get in the state of mind wherein peevishness will be cast to the wind, and that it may stay for two days and come back Monday morning and resume our peevish attitude and proceed with this inquiry.

We excuse Mr. Baldwin. All other witnesses are directed to appear before the Committee Monday morning at 11 o'clock.

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JANUARY 3, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Chairman Thompson.— Mr. Salmon, you and your folks may be excused until 2:30 o'clock. We will put you on the stand at that time. I think as far as Mr. Simmen is concerned, we won't examine him, but if he wants to make a statement, he may make it.

Mr. Wilcox.— Will that be this morning?

Chairman Thompson.— No, I think not; not until half-past two, anyway.

REGINALD P. BOLTON, being first duly sworn, testified as follows:

Examination by Mr. Lewis:

Q. Will you tell us where you reside? A. 638 West 158th street, Manhattan, residence; and No. 55 Liberty street, my place of business.

Q. Mr. Bolton, what is your business? A. I am a consulting engineer.

Q. And connected with some corporation engaged in the metering business? A. Yes, sir; I organized last May the Electric Meter Corporation, a company designed to operate in the electrical meter business, and leasing, purchase and reading, and indexing, and maintaining of electrical meters.

Q. That is a New York State corporation? A. Yes, sir.

Q. Who were your incorporators, with yourself? A. My associate, Mr. Forgee, and I think my friend, Mr. Fairbanks.

Q. What Fairbanks is that? A. Mr. K. Fairbanks, a certified public accountant.

Q. And what is his first name? A. Kenneth.

Q. Where is Mr. Fairbanks' office? A. In the same building as my own, 55 Liberty street.

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Q. And the other member of the combination is where? A. He is also with me.

Q. Is he president of that company? A. Yes, sir.

Q. But you were the organizer of that company? A. Yes, sir; and I am now the treasurer.

Q. Will you tell us the purpose of forming that corporation? A. Yes, sir. I learned that this question of the abandonment of what is known as the practice of what is known as sub-metering was about to be instituted in this city.

Q. From whom did you learn that? A. From various sources, and my information, I think, was from hearsay information, that I acquired, but I made inquiry and found it was before the Public Service Commission at that time.

Q. Of whom did you inquire? A. Of the secretary of the Commission, Mr. Whitney.

Q. And did you obtain from him the information to the effect that the Commission would abandon the then method of metering in apartment houses? A. Yes, sir; I received information to the effect that that process would be abandoned.

Q. And that was in advance of the making of the order, was it? A. Yes, sir; it was before the final order was made.

Q. When was the final order made upon that subject, if you know? A. I don't recall; I think my recollection was it was May.

Q. Of which year? A. Of this past year, 1915. All of this occurred in 1915.

Q. Isn't it true that the final order was made in October of 1915? A. Yes, sir; I think you are right, because when you use the word "final," that is true.

Q. And you had notice of the fact that such an order would be made in May of 1915? A. Yes, sir; I understood it in this form, that the practice of sub-metering was to be abandoned, and that in all probability that would go into effect in the very near future, and at that time it was assumed it was to be immediately.

Q. For the purpose of the record, will you state what you mean by the phrase "the practice of sub-metering?" A. The so-called practice of sub-metering has heretofore been in existence in many cities in the United States, and I think this city is the very last one in which the practice was maintained up to the past year. It consists of the following process: The owner of the premises,

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the landlord, as we may describe him, enters into a wholesale contract with the power company, and has a meter placed in his premises upon which the energy is read that is supplied to the whole of the premises, and he has a number of tenants, and in the apartment house each individual tenant has an individual meter on his premises, and if a loft, there is a meter on that floor. The practice has been heretofore to read each of those individual meters separately by the agents or meter men of the company, who would go so far as to render bills to the tenants for the energy, and would credit the owner the difference between the price of all that energy sold at the retail rate and the sum of the energy sold at the wholesale rate, as recorded on the master meter.

Q. The effect of that was to make it possible and probable that the company would pay money to the landlord instead of the landlord paying money to the company? A. Well, sir, it would never reach that point, quite, because you will understand in all the buildings the landlord himself always has some energy used in his part of the building, and consequently it effects a very substantial reduction in his bill in many cases.

Q. Because of the fact that the current consumed by him or for his benefit, he obtains that current at a very much lower rate than is charged to the individual consumers? A. Yes, sir. In making that statement, in the two instances of the man and the tenant, both of the rates or charges are the legitimate rates in effect at the time.

Q. And the landlord gets the benefit of the wholesale rate? A. Yes, sir.

Q. And the individual consumer pays the regular retail rate? A. Yes, sir.

Q. But the difference between the wholesale rate and the retail rate is credited to the landlord? A. Yes, sir.

Q. In reduction of the amount of the bill rendered against the landlord? A. Yes, sir.

Q. And operates, in fact, to paying over to the landlord each month a substantial sum, either in cash or its equivalent? A. Either in cash or by reduction of his bill. When you say a substantial amount, may I say that varies very much indeed. Sometimes it was substantial and sometimes very immaterial.

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Q. But in the aggregate year by year it amounted to considerable benefit to the landlord? A. Yes, sir.

Q. That practice has prevailed in New York for how long? A. Well, it has gradually grown up, as far as I recall it, in the last fifteen years.

Q. It has been the subject of complaint to the Public Service Commission, has it not? A. I don't know how that matter came before them. I cannot tell you whether it was a complaint or not.

Q. A decision was rendered in October after a hearing upon the propriety of this practice, was there not? A. Yes, sir, and as I understand —

Q. Before what Commissioner was that hearing held? A. I don't know, sir; I was only present on one occasion, and that was before the whole Commission at that time.

Q. And at what time was that, when was that hearing? A. I think that was in May or June last. I have forgotten the date.

Mr. Lewis.— I offer in evidence a copy of an opinion entitled "Before the Public Service Commission, First District, in the matter of the hearing on the motion of the Commission as to rate schedule of the New York Edison Company; also in the matter of the motion of the Commission as to the rate schedule of the United Electric Light and Power Company." The first case being No. 1958 and the second case No. 1968; signed George V. S. Williams, and dated August 18, 1915.

The same was received and marked Exhibit A of this date.

Mr. Lewis also offers in evidence formal order in the same matter, Case No. 1958, made at a meeting of the Commission held on the 15th day of October, 1915.

The same was received and marked Exhibit B of this date.

Mr. Lewis also offers in evidence the opinion of Commissioner Hayward in the same cases dated October 1, 1915.

Same was received and marked Exhibit C of this date.

Q. When was your company organized and ready for the transaction of business? A. We were organized in May and we were ready to commence operations in the month of June.

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Q. Tell us just exactly what you do or your company does in connection with meter service? A. Yes, sir. I will be pleased to do so. Our company offers to relieve the owner of the property, the landlord of the necessity of purchasing these meters which have heretofore been established on his premises, without charge to him, and which under this new system he is supposed or compelled to buy. Our plan as I formulated it was to take upon ourselves the purchase of their meter and then rent it to the landlord for a small sum monthly, which would be such as would see us through with our expenses in connection with the meter and allow us to make a fair return on our capital, and also pay for the meter itself within a reasonable length of time. Then, in addition to that, we offer to read those meters — to maintain those meters, as regards upkeep, and to test them from time to time to see that they are in proper order, and also to keep the landlord informed of the condition of his meters, and if necessary to render bills for him for a small percentage, and collect the money from the tenants and account to the landlord for the money in question. Also, keeping him informed on the condition of his own meters.

Chairman Thompson.— When was your company incorporated?

Mr. Bolton.— I think the end of April. I have forgotten the date.

Chairman Thompson.— Have you a list of the stockholders?

Mr. Bolton.— I am the sole stockholder. We have issued no stock at all. Under the conditions from which we have been postponed from month to month, I have put up all the money, and intend to take all the stock, anyhow, and I am the sole representative of the company in that respect.

Chairman Thompson.— Nobody else has anything but you?

Mr. Bolton.— No, sir.

Chairman Thompson.— How do you get the other officers?

Mr. Bolton.— I have to qualify them, and will do so, of course. The thing has been so held up I did not know where I was at, and held the thing in abeyance up to the present time.

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Q. Has your company commenced business? A. We have not. We have not been able to acquire a meter or charge anybody for the use of them up to to-day, and we have been in that condition.

Q. Have you made any contracts with landlords? A. Yes, sir, we have made a large number of tentative contracts, which are ready to be put in operation as soon as the final word is said.

Q. What final word is to be said? A. We understand up to this morning there is a probability of another month's adjournment, which has been granted by the Public Service Commission continuously since July on this subject.

Q. The final order was entered in October? A. But there was an adjournment granted after that for a month, so it should not go into effect, and another in December, and I don't know where we stand to-day.

Q. The order made in October had not become effective because of a stay of proceedings, is that it? A. The action of the Public Service Commission in granting an adjournment or postponement.

Q. Who asked for that postponement? A. I presume the New York Edison Company and the United Electric Light Company, and I know the ground on which they have asked for the adjournments, and that is that they have found it necessary in a considerable number of cases to install the master meter or landlord's meter, because a number of the buildings were not fitted up with master meters, and only with the tenants' meters, and one meter for the landlord, and it was necessary, in order to make the thing uniform, a new master meter should be put in many of the buildings, and my information last week was they couldn't get all the meters ready in time, and they were still, I think, some four hundred meters, master meters, short. What is going to be done to-day, I cannot tell you. The master meter is the landlord's wholesale meter that supplies the whole building only, a large meter.

Chairman Thompson.— It does the work within four per cent, the same as the others?

Mr. Bolton.— Yes, sir. That is the human per cent, also.

Q. Were you in attendance upon the various hearings upon this matter? A. No, sir; only one.

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Q. That, you say, was in May? A. June, I think.

Q. Were you represented at the various hearings? A. No, sir; I wasn't.

Q. Did you have any information from time to time as to the progress of the hearings? A. Only by inquiry of Mr. Whitney.

Q. Was the idea of organizing this company your own conception? A. Yes, sir.

Q. Did you discuss it with the representatives of the lighting company? A. In a certain point, yes, sir.

Q. Will you tell us with whom you discussed it? A. I spoke with the head of the meter department of the New York Edison Company, by way of getting information and letting him know what I was trying to do, and with one or two of the officers of the New York Edison Company and of the United Company, with a view of ascertaining what they were willing to do.

Q. Will you give us the names of the officers? A. Mr. Frank Smith, president of the United Company particularly, as to what they would be willing to do with regard to the price for the meters, and with Mr. Williams of the New York Edison Company on the same question in regard to their meters which are of a different character.

Q. Was it your idea to purchase the meters from the operating companies? A. Yes, sir, that was our first idea, that the companies would be willing to sell to us, and we rather put our foot in it by issuing a circular to some of our clients whom we were approaching on the matter in which we made the statement that we were going to buy the meters from the companies, and we thought we could.

Q. Have you been able to buy them from the companies? A. No, sir. We understand that they will not sell them direct to us, and we can only buy them from the landlords, and we are ready to do that. Of course the situation as it stands to-day has developed in a manner that I would like to tell you about.

Q. Who suggested to you that the only way you could buy the meters from the company would be through the landlord? A. Mr. Smith of the United told me that. He said he did not believe that they could do it in any other way.

Q. What did he mean by that? A. I understand there was some legal objection or the Public Service Commission order might

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take that form, but I don't know whether it has or not. All I know, up to the present time our suggestion of purchasing it was declined, and we are only able to negotiate through the landlord.

Q. Let me ask how this is going to work out in practice; it seems to me that the tenant taking an apartment in some apartment house buys a meter, does he not? A. No, sir, the tenant don't buy the meter. The landlord has to buy that meter.

Q. The landlord buys the meter and sells it to you? A. Yes, sir, sells it to me.

Q. But under the order of the Public Service Commission as it stands, the tenant would have to buy that meter, would he not? A. No, sir, I don't think so. If this practice of sub-metering in a building is abandoned by the landlord, the landlord has his own meter and each tenant has his own meter and the company supplies that meter to the tenant. They cannot make the tenant buy it. Each one will make a separate contract with the company and will be billed by the company in the regular way, the same as any one has. I have my contract and the meter set, and I don't pay for the meter, and the landlord will do the same thing, but where the company abandons on the landlord's premises a large number of tenants' meters, they will either take them out, if the landlord says so, and the landlord will put others in if he prefers to continue sub-metering, or the landlord will buy those meters from the company and the company will not leave their property in there without getting something for it, as I understand. As the thing has worked out, in a considerable number of cases, quite a large number of people have settled it. There has been so little in it under the reduced rates and they have abandoned the process, and turned the tenants to the company to make their contracts.

Q. And the landlords have gone out of the business of retailing the current? A. Yes, sir. There are some, possibly eight hundred to a thousand, that may continue this practice of sub-metering for their own benefit. I may say in study of the matter and going after business, we have found about four hundred cases in which we recommended the landlord not to bother any longer with the practice of sub-metering, and there wasn't enough in it for him, and a number of landlords who had contracts with companies which used to read meters for them and collect their bills for them, and these contracts were very advantageous to the landlords, and

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they didn't know that they were getting but a very, very small return, and that corporation taking away sixty or seventy per cent of all the money that was in it.

Q. Where does your company get any profit in it? A. We think we will get a very good profit and make very good returns, and at a very moderate price. In the first place, we put our rate down to fifty or sixty cents a month for scale price, which represents the monthly rental and upkeep and occasional testing of the meter. That is a price that appeals to many of the landlords.

Q. How much? A. Fifty or sixty cents a month for each meter.

Q. And the tenant in the apartment house pays you the fifty or sixty cents? A. The landlord.

Q. And if he has twenty apartments in an apartment house, he pays you at the rate of ten dollars a month? A. Yes, sir.

Q. And for that service, you do just what; for that payment you do just what? A. We rent him the meter and look after it and test the meter once every three months.

Q. You read the meter? A. We read the meter for him for an extra charge; that is, if we read or bill the meter, we make him a charge for that service of a small percentage on the amount involved.

Q. Will you go on and tell us anything else you do for the benefit of the landlord? A. I do not know that I can. I haven't anything more. That covers practically the whole of our service.

Q. Is this an arrangement which meets generally with the approval of landlords? A. It does, indeed. We have practically covered the entire field in the borough of Manhattan, and while we frankly advise quite a number of people not to continue it under the existing conditions, which are not to their advantage, we have over three hundred, I know, in contracts at the present time, some from owners of property, including many hundreds of meters under their control, and we have found our suggestion has been a source of relief to owners of property, due to this fact, while a meter is not a very large expense in itself, and the owner of a large property might readily find the money to buy twenty or thirty meters, but it constitutes another expense, and the present condition of real estate is not advantageous to putting more money

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into the properties under the existing conditions, especially in apparatus of a comparatively short life.

Q. Isn't it a fact that the owners of buildings, by reason of the order issued by the Public Service Commission, will find it necessary to buy all of these sub-meters and own them themselves? A. Yes, sir, if no such means as I am offering is available.

Chairman Thompson.— Have they bought them, heretofore?

Mr. Bolton.— There have been cases, but it is not a widespread practice. We have three or four clients have owned their meters for a number of years.

Q. About what is the value of a meter? A. The direct current meter, to purchase it new, varies, of course, with the size, but about an average for the small consumers and tenants in this part of the city would be somewhere about seventeen dollars, to buy it new, and there is a little additional expense in fixing it up and making connections.

Q. Does that mean installed, seventeen dollars? A. No, sir, delivered, but not installed.

Q. What is the expense of installing? A. I suppose three or four dollars.

Q. The expense would approximate about twenty dollars a meter? A. Yes, sir. The alternating current meter is always cheaper. That meter, I suppose, could be installed and set for a little less than twelve dollars.

Chairman Thompson.— What do you mean by that? Twelve dollars? Where did you get that price?

Mr. Bolton.— The new alternating current meter for a small service, such as domestic apartments, costs about eight dollars.

Chairman Thompson.— Electric light companies can buy them for about six dollars and a half, can't they?

Mr. Bolton.— I don't know. I am not dealing in such large numbers as that.

Chairman Thompson.— I know an electric light company, quite a small one, buys them for about six dollars and a half?

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Mr. Bolton.— There is a cheap meter can be bought for that, but it is not as satisfactory a one as you would like to have. The proper meter to put in would cost about eight dollars.

Q. Which is the general one, the alternating or direct current? A. In Manhattan it is direct, and where I live it is alternating. The bulk is direct current.

Q. Have you read the Public Service Commission order? A. I did read it at the time, but I have not looked at it since.

Q. Does the Public Service Commission order establish the turn-over price of these meters? A. I don't know whether it does or not. I don't think they did, because I know I was somewhat in the dark at the time as to what price we could get them at.

Q. The order before me contains this paragraph: "Fourth. That the said company's rate schedule shall contain in full the terms under which said company will sell any meters now owned or installed by it."; did you know of that provision? A. Yes, sir.

Q. Do you know of the company having actually sold any of the meters in these buildings owned by the landlord? A. No, sir.

Q. Do you know what the schedule price is; that price is as set forth from the schedule? A. No, sir; but I will see that you get it to-day. I have it over at the office.

Q. Is there any other company engaged in this business, other than yours? A. Yes, sir, I think there are. There were several established companies doing forms of that business prior to the formation of my company.

Q. What is the name of your company? A. The Electric Meter Corporation.

Q. What other companies are there? A. I don't know the names.

Q. Do you know one of the name of the Realty Supervision Company, Incorporated? A. Yes, sir; I have heard of it.

Q. Do you know where it is located? A. No, sir.

Q. Do you know any of the people connected with it? A. If you mention them, I might say.

Q. Are you unable to mention the name of any one connected with that company? A. I had an interview with a man named Green, and in connection with this very affair, so long ago as last May, and I think he was one of the parties connected with one of these companies.

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Q. Had his company been organized at that time? A. Yes, sir, I think so.

Q. And doing business? A. I think it was doing business, yes, sir.

Q. Before the order of the Public Service Commission was made, was it? A. Yes, sir; there were several of them doing business at that time.

Q. Do you know what position Mr. Green held with that company? A. I think he was president. He approached me as the president of that company and made a proposition to me.

Q. In connection with the organization of a company by you? A. Yes, sir.

Q. Will you tell us what that proposition was? A. Yes, sir. I don't think there is anything that would hurt Mr. Green's feeling perhaps more than I hurt them at that time. He came to me with a suggestion to purchase a share in my corporation and to work with me in that line of business, and he told me that he considered it was a very good business and his experience had all been along that line, and what he objected to on my part was my announced intention of leasing these meters at the low rate I had already stated I was going to put into effect, and he didn't like my idea of operating this company on the lines which I had explained to him, especially those which were determined, if I could find it out by determination by the Public Service Commission. Mr. Green told me further that if I was determined on following this policy that he and others would form a combination and they would cut the price and would drive my corporation out of business, and he asked for me to consider that proposition, and told me they were going to engage counsel of high standing to fight the matter through and would either tie it up in a knot so I couldn't do any business or undersell me so I couldn't do any business.

Q. Did he name the counsel he was going to engage? A. No, sir.

Q. Did he mention any other names of individuals connected with him in that company at that time? A. I think so, but I don't recall them.

Q. Don't you remember any name he mentioned? A. No, sir, I don't think I do.

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Q. Was the name of Mr. Maltbie mentioned at any time? A. Not at that time, no, sir.

Q. Had he any connection with Mr. Green's company, do you know? A. I understand he is in an advisory capacity connected with Green's company, the ex-Public Service Commissioner.

Q. Mr. Milo R. Maltbie? A. Yes, sir.

Q. In what capacity do you mean when you say in an advisory capacity? A. I understand that he has represented Mr. Green's corporation in hearings before the Public Service Commission, and while I have no personal knowledge of the matter, I have been told that his name appears on the letterheads of Mr. Green's corporation.

Q. Did you ever talk with Mr. Maltbie on the subject of this matter? A. No, sir.

Q. Did any other corporations or individuals approach you on the subject of a combination such as Mr. Green suggested? A. Yes, sir, there was a party by the name of Schwartz, I think, was not associated with Mr. Green, but they were in some measure acting together.

Q. Mr. Schwartz have a company of his own? A. Yes, sir.

Q. What was the name of his company? A. I don't recall it, but I will find out and let you know it.

Chairman Thompson.— Did you have just as friendly an interview with him as the other fellow?

Mr. Bolton.— I am afraid not quite so friendly, but to Mr. Green I made a very careful reply, to Mr. Green's proposition, under date of May 13th, and I have a copy of that letter in my hand.

Q. Did he have a proposition which he submitted to you in writing? A. No, sir, his proposition was verbal.

Q. May I see that reply? A. You may. (Witness hands reply referred to to Mr. Lewis.)

Chairman Thompson.— Some matters came before the Chairman of this Committee in reference to the letting of street lighting contracts in the city, and an interview was given which appeared in the New York Times, and at that time I think that my statement was to the effect we ought to investigate and see whether or

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not the Public Service Commission should be given jurisdiction to supervise the letting of the contracts for street lighting by cities, because of some matters which came up and were called to my attention in relation to street lighting here. I have the following letter I just received:

"January 3, 1916.

"Hon. George F. Thompson, Chairman, Legislative Investigating Committee, 165 Broadway, New York City, N. Y.

"Dear Senator:

"You are reported in the New York Times of this morning as stating that in your opinion 'A very thorough investigation should be made into the whole subject of street lighting.' I urge that your Committee forthwith make such an investigation. The department will be very glad indeed to have the opportunity to explain to you by what methods it has within less than two years succeeded in reducing the annual cost to the city for public lighting by some $800,000 and also to explain some of the difficulties, not of its making, which it encounters in executing the law. I desire to assure you that every official and employee of the department having to do with the work of city lighting will place at your disposal all relevant information in his possession.

"Respectfully,

"WILLIAM WILLIAMS,

"*Commissioner.*"

I think that, under the circumstances, Mr. Williams is entitled to an opportunity to be heard before this Committee, and the Chairman will send a letter acknowledging this and correcting the interview in the Times a little bit there, and will give Mr. Williams an opportunity to appear before the Committee next Friday morning at 11 o'clock.

Q. May I have this copy? A. Yes, sir.

Mr. Lewis offered in evidence copy of the communication dated May 13, 1915, addressed to Vivian Green, Esq., 45 West 34th Street, New York City, and signed, Reginald P. Bolton.

Same was received and marked Exhibit D of this date.

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Exhibit D is as follows:

"May 13, 1915.

"Vivian Green, Esq., 45 West 34th Street, New York City:

"Dear Sir:

"I have given very careful consideration to the suggestions which you laid before me on the occasion of your visit on the 11th instant, and as I am anxious that you should understand fully the situation as I view it, I desire first to state your propositions, as I understand them.

"I understand from you that the several firms, including your own, which have been heretofore engaged in the business of sub-leasing, auditing and collecting for electric service supplied through sub-meters to the tenants of certain buildings, feel that the establishment of the business of The Electric Meter Corporation has introduced a scale of charges for the rental of meters and services incident thereto, which will have the effect of substantially reducing the amounts which they have heretofore been in the habit of charging.

"I further understand from you that several of these parties have formed a combination of interests, with a view to taking some undefined line of action, adverse to the operations of The Electric Meter Corporation, in this regard.

"Your proposition as I understand it, took two forms:

"(1) That The Electric Meter Corporation should either increase its charges for meter rental and services, or should make a special price to the parties referred to, based upon the total number of meters which may come under the scope of their operations.

"Alternatively, your personal suggestion was to the effect that you would be willing to abandon your share in the combination which you described, upon the basis of your joining the operations of The Electric Meter Corporation, by making an investment in its capital stock, and bringing to its operations such meters as you now own or control.

"I wish to thank you for both of these business propositions, and in response thereto, desire to express my own purposes in this matter as follows:

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"In learning of the intention of the public service companies to discontinue, in the near future, the service of sub-meters, I realized, as a property owner and as one who has been closely in touch with real estate interests for many years, the difficulties that would confront the owners of many properties affected by this decision. I also realized that an opportunity exists for some organization to meet the emergency created by the purchase of existing or new meters, to offer a continuance of existing sub-meter service to such owners as would find it to their advantage to continue the method of dealing with their tenants, upon the basis of the reduced rates recently established by the Public Service Commission.

"Acting from this point of view, my purpose in organizing The Electric Meter Corporation was not only to take advantage of the business opportunity, but so to arrange and conduct the affairs of that corporation that owners of real estate should be protected both as regards the rates charged, the costs of service, and above all, the protection of the owner and of the tenant, by the maintenance of the control of the Public Service Commission, over the details of the situation. My first action, therefore, in this regard, was to place a charge for rental of the meters which The Electric Meter Corporation has purchased and will purchase, at the lowest possible rate commensurate with a reasonable return upon the investment, and in respect of the labor and other expenses involved.

"The corporation having thus entered upon its operations has followed the policy I have indicated by submitting to the Public Service Commission a statement of its desire to continue the control of the Commission over all or any features of its business which the public interest requires.

"I am not able to see wherein this course of action is adverse to the interests of any persons or parties other than those who may have been in the past charging unwarrantably high rates for the services of similar character. It appears to me that the proper course for those parties is to meet the situation in the same manner and by the same methods, and that this being the case, the field of operation is open to them as it is to The Electric Meter Corporation.

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"I have conferred with the president of that corporation very carefully over your two proposals and we do not find that either would be acceptable to us.

"As regards the question of a reduced rate to the firms engaged in this line of business, we consider that the rates we have now established are the lowest that can in justice to the corporation and to the owners of property be established. The scope and purpose of the corporation being to deal as directly as possible with the owners of property, we shall welcome any relations with owners or with their authorized representatives, in which relation, we understand, some of the parties referred to, already stand.

"Finally, I desire to thank you for the proposal to unite your business with that of The Electric Meter Corporation and to invest money in its stock. I have, however, already made all necessary arrangements for the financial operations of this corporation and do not feel that any extension of its control is desirable or necessary. I am therefore unable to accept your kind proposition. I trust that you and others who are interested in this line of business will find, as I have said, that the field is open and wide enough for the operations of all, upon reasonable lines of profit, and of benefit to the owners of real estate.

"Yours very truly,

(Signed) "REGINALD P. BOLTON."

Q. Did you receive any reply to this communication to Mr. Green? A. No, sir.

Q. Have you seen him to discuss the matter with him since you mailed this letter to him? A. No, sir.

Q. This letter was sent through the mail, was it? A. Yes, sir.

Q. And at the address mentioned? A. Yes, sir.

Q. With how many landlords have you made tentative agreements? A. I think over 300. I am not sure of the exact number up to to-day. I will be glad to let you know positively later in the day.

Mr. Lewis.— I am inclined to think we may as well defer further examination of Mr. Bolton, until he gets together the additional information he has promised to furnish.

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Q. Have you a written or printed copy of the contract your company gives? A. Yes, sir. Of the form of contract?

Q. Yes. A. Yes, sir. You also wanted the price of the meters?

Q. Yes, please. A. I will furnish that. May I make one little statement, before I leave the stand?

Q. Certainly. A. In going into this matter of the purchase of these meters, I did so because I was led into it rather from the standpoint of the landlord. I have had the misfortune of being a landlord myself for a number of years in New York city, and, as was remarked by, I think, Senator Thompson the other day, in another hearing of his, a landlord, like a married man, may have feelings, and may deserve an occasional tear being dropped in his memory. At any rate, the landlords have been having a pretty hard time in New York, in my experience, and even a little thing like the reduction of the rate was to the advantage of the tenant, and it was not so much to the advantage of the unfortunate landlord, and he was confronted also with the necessity of putting his hand in his pocket and finding or borrowing money to purchase more meters, and that suggested the buying of the meters, and I have clients in New York who were actually engaged in this practice of sub-metering.

Chairman Thompson.— If the electric light company had been in the habit of furnishing all of these meters, and it was proved to the satisfaction of the Public Service Commission that the rate ought to be reduced, why was it put in the order that the company should be relieved from its liability it always heretofore assumed of furnishing the meters; what was that put in the order for?

Mr. Bolton.— I am not able to answer that question, but I see rather a logical order of occurrence in this situation to-day, but I told you, when I began, this is the last city, as far as I know, in the whole country, to maintain the practice of sub-metering, and Chicago modified it long ago, and most of the other companies have abandoned it long ago, and it was a useless expense and merely adopted for the convenience of the landlord, at the expense of whom — the company, and through the company, of the retail consumer, and we come to a situation where after proper investigation, it has been decided to lower the rate, and I suppose it would be natural for the company, when the question came up, to

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offer as an excuse for maintenance of the rate, the fact they were maintaining the meters free.

Chairman Thompson.— That was taken into consideration by the Public Service Commission when they fixed the lower rate, and they gave the company credit for the expense they were put to for installing and maintaining the meters?

Mr. Bolton.— I don't think so. I think the reduction of the rates, which I think came about last summer, was coincident with the consideration of this meter matter, but I assume that the reduction of the rates was predicated in part upon the abandonment of this meter service.

Q. Isn't this the net result of the making of this order, isn't it the net result that the electric light company sells to the tenant electricity at a lower rate than it has heretofore been receiving? A. Yes, sir.

Q. And doesn't it recoup to some extent, at least, the loss of income by reason of reduction in the price to the tenant by shifting to the landlord the burden of investing in meters, the burden of maintaining the meters, and the burden of reading the meters, and the burden of collecting the bills from the tenants? A. Yes, sir. You have got exactly the right view of it, and the only question that I understood where the Chairman wanted to know, was whether the two had been properly considered in connection with one another, but let us remember, Mr. Lewis, the general effect and volume of this whole business. There were, perhaps, forty thousand meters in this city on tenants' service, I mean in the borough of Manhattan, on tenants' service, under such conditions as are affected by this order. There are some hundred and fifty thousand individual consumers upon the system of the New York Edison Company alone, and I suppose there are some forty thousand more on the United Company, or nearly two hundred thousand small and moderate-sized consumers, who have benefited by the reduction in rates, and on the other hand, only forty thousand whose meters have been affected by the change, and that is still further reduced down to the fact there were only some two thousand landlords who were in the position of doing the sub-metering.

Q. It reduced the burden of reading the meters by eliminating

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forty thousand meters, and turned those meters over to the landlords who have to assume that burden? A. Yes, sir; but, on the other hand, if you look at it from their standpoint, from both sides, the company now takes over the care of a very large number of those meters turned over to it.

Q. That is the master meters? A. Yes, sir, where the company does and properly should get a direct benefit first, to whatever extent the capital investment in these meters comes back to him. That has been money out of pocket, and interest and fixed charges on that has had to be earned.

Chairman Thompson.— You say you put all the money in this corporation; how much money have you invested in it?

Mr. Bolton.— I have about $10,500.

Chairman Thompson.— What is that for?

Mr. Bolton.— For running expenses of the business, and my associate's salary, and the clerk's and starting books.

Chairman Thompson.— Aren't you pretty friendly with the directors of the New York Edison Company in this matter?

Mr. Bolton.—No, sir; not in this matter particularly.

Chairman Thompson.— You have been sending out notices to the landlords?

Mr. Bolton.— Yes, sir.

Chairman Thompson.— Where did you get that list?

Mr. Bolton.— Partly from inquiry and real estate lists.

Chairman Thompson.— Didn't you get it from the Edison Company?

Mr. Bolton.— No, sir. My young men get all the information they can, and sometimes they have it from the employees of the companies, possibly.

Q. How many young men have you employed? A. One soliciting, and one keeping books, and the man that is now reading certain meters which we have already under contract, in buildings where the landlord already owned — three men.

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Q. Were any of these men now in your employ formerly in the employ of the Edison Company? A. Yes, sir, at one time, although not taken from the Edison Company. They were taken for their experience, because they knew something about the business.

Q. How recently in the Edison Company were they employed, when you employed them? A. I think some years, in one instance, and another comparatively a long time. They were not New York Edison Company employees.

By Chairman Thompson:

Q. How do you get authority to read the meters? A. From the landlord. It is his property, substantially speaking. It is our property, but on his premises.

Q. If you read the landlord's meters, you would be friendly to the landlord as against the tenants, wouldn't you? A. That brings up the point I did discuss with Mr. Whitney. I went to him and described the arrangement I was proposing to make, what I was proposing to do, and Mr. Whitney said his angle of vision was from the Public Service Commission, and it was established largely for the protection of the public, and I told him I agreed with that, and I said, "I think the operations of my corporation ought to be under your control," and he said the law wouldn't allow it to be, and I said, "I will confirm in writing that we will follow any order or direction you make in this direction, or any suggestion that will be for the protection of the public, and I am referring especially to the correct reading of the meter and the power the Public Service Commission have of taking out a meter and testing it. We will voluntarily submit any meter we have to that."

By Mr. Lewis:

Q. The Public Service Commission can inspect a meter anywhere, if they wish? A. Not on the landlord's property, if it is his property. Even engineers disagree occasionally on these matters.

Q. How much capital stock has your corporation? A. Fifty thousand dollars.

Q. How much has been issued? A. None whatever.

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Q. How much has been paid into the treasury? A. I paid $10,500.

Q. For that have you received anything as an evidence of payment? A. Nothing more than the endorsement of my checks.

Q. And you are the treasurer of the company? A. Yes.

Q. In what bank is your company's account kept? A. The Broadway Trust Company.

Q. How is the money of the corporation checked out, upon whose checks? A. Upon the corporation's checks, signed by two officers, by myself and Mr. Forgee, as president. I was going to add to what I have said, I don't know whether this Committee would arrive at a conclusion that this whole process should be included in any revision of the powers of the Public Service Commission, but I would like to say if in your vision that is a course that should be taken and you should recommend it to the Legislature, I will be the first one to come to Albany and back up your suggestion.

Q. Now, the net result of this order is to relieve the electric light companies, is it not? A. Yes, sir.

Q. To the extent, at least, that they are not required to invest their money in the first cost of meters, the electric lighting companies are benefited? A. Yes, sir.

Q. To the extent that they are not required to maintain those meters and repair them, the electric light companies are benefited? A. Yes, sir.

Q. And to the extent that they are not required to read the meters and make out bills and collect the amounts of the bills, the electric light companies are benefited? A. Yes, sir.

Q. Is there any way of estimating in dollars and cents the benefit that the company gets per customer as the result of this order? A. Well, I don't know that there is.

Q. But it is a substantial benefit? A. I would not be able to figure that right off the handle. There is the interest upon the investment and the cost of the meter; the money that will be returned to them, and the value that it is to them.

Q. And then the lessened amount of the inspection and the lessened amount of testing? A. Yes, sir.

Q. And the lessened labor of reading the meters? A. Yes, sir.

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Q. May it not be a fair estimate to say that for each domestic customer served, the company benefits by this order to the extent of perhaps two or three dollars a year? A. Yes, sir; I dare say it might be, that is, to the extent the process is in operation.

Chairman Thompson.— Not only that, but where the tenant who finally pays has heretofore been given at least the legal protection of a Public Service regulation, under this scheme there will be no public service question of the reading of the meters for the benefit of the tenant?

Mr. Bolton.— That is quite correct, and you hit the point I discussed with Mr. Whitney, and I should be entirely in accord with you if some means could be found whereby it could be under the Public Service Commission.

Q. Who else benefits by this order, besides the electric lighting company? A. The landlord in many instances will be rather better off than he was, and that is due to the fact that under the new conditions, even paying my little company what he is going to pay us, he will have a better arrangement than he has had heretofore. A large number of the landlords have fallen into the hands of men whose operations were quite unjustifiable, and the landlord has derived little or no benefit out of the process, and I can only describe some of them as absolute sharks.

Q. What men do you refer to, or what methods do you refer to? A. The methods employed by some of these so-called inspection companies, the nature of whose arrangements with the landlord have come to our knowledge and observation, and we find that by the new proposed arrangement, with a straight low rental for the meter, a small charge which is only 3 per cent for the reading and collection of bills, the landlord will make more money than he did before.

Q. Who are the men and what the methods; the men who were the sharks, and the methods that were shocking? A. I would like to be able to tell you that, but I have an awful bad memory for names, and I cannot tell you that. I know those things have been going on.

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Q. Have you just exactly as poor a memory off the stand as on? A. Only in the matter of names.

Q. Could you refresh your recollection and give us the names of some of these sharks? A. I will be glad to do that.

Q. Make a memorandum of it, so your treacherous memory will not fail you. A. I will write it down as sharks.

Q. Is the tenant better off under the old system or new? A. He has a lower rate, and is better off under the new system.

Q. In the long run is that a benefit to him? A. If you allow me to express a personal opinion, the general effect of lower rates is additional wastage. The lower the rates, the more is used. I don't think the people will use less energy, but more in time.

Q. Isn't the landlord likely to charge back against the tenant any burden that might naturally result, the expense of which he would have to bear, except for charging it back to the tenant? A. Speaking from the attitude of the landlord, I should consider he would be a chump if he didn't, but I do know landlords who have a heart and refrain from charging everything they might. If I charged all my tenants for all the shades they spoiled by leaving the windows open in stormy weather, I would have a considerable difference in my income.

Q. How many landlords have you known who have a heart? A. Speaking from the single tax standpoint, I know of one. I have a heart.

Chairman Thompson.— The Committee has been given access to the bank account of Mr. Ford, and they find that he has properly spent the whole five thousand dollars he received for that patent, and we will discharge him as a witness. I do not know whether Mr. Ford wants the details of his expenditures given out, but if he does, he can make a statement.

We will suspend until 2:30 o'clock P. M.

Whereupon, at 1:20 o'clock P. M., a recess was taken to 2:30 o'clock P. M.

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AFTERNOON SESSION

Assemblyman Burr acting as Chairman.

REGINALD P. BOLTON, recalled.

Examination by Mr. Lewis:

Q. Mr. Bolton, have you produced any of the matters or records that you said that you were willing to produce? A. Yes.

Q. This represents, as you understand it, the purchase price of meters of different capacity? A. Yes, sir. That, if I may explain, Counselor, is rated "new meter price schedule." That is only new in the sense that it takes the place of a prior schedule which was issued before that at a higher price. It refers to the second-hand meters now installed in these buildings.

Q. This is the price which it is expected that the landlord is to pay to the company for the turnover? A. Yes, sir.

Q. And this is authorized by the Edison and the United companies? A. That refers only to the Edison Company.

Q. The Edison Company only? A. Yes, sir.

Mr. Lewis.— I offer this in evidence. I will read it into the record:

> "New meter price schedule. For meters not exceeding ten amperes, rated capacity 120-240 volts, $8.00. In excess of ten amperes but not exceeding twenty-five amperes, same voltage, $10.00. In excess of twenty-five amperes, but not exceeding fifty, same voltage, $13.50. In excess of fifty amperes, and not exceeding seventy-five, same voltage, $17.00. In excess of seventy-five amperes, and not exceeding one hundred amperes, same voltage, $20.00. In excess of one hundred amperes of rated capacity, $25.00."

Mr. Bolton.— I will now hand you that.

Q. You have now executed 305 contracts for your company, Mr. Bolton? A. I have.

Q. And have you produced a copy of your contract? A. Yes, sir. Three forms of contract.

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Q. How many meters will the 305 contracts which you have entered into represent? A. I should think about 8,000 meters. You may keep those if you wish.

Q. You have three forms of contract? A. Yes, sir.

Q. You have one, the blue one, for the furnishing of meters only? A. Yes, sir.

Q. No. 2, the pink one, for the furnishing of meters and the rendering of the monthly statement, showing the consumption per meter? A. Yes.

Q. And No. 3, the white one, for the furnishing of the meter, rendering the bills to tenants, collection of bills from the tenants? A. Yes, sir.

Q. Which character of contract do you find the more popular among your customers? A. Why, I think they are pretty evenly distributed. One appeals to one man and one to another. I wish to present those letters, if you regard them as important.

Mr. Lewis.— I offer in evidence contract form 26, contract form 27 and contract form 28.

(Received.)

Q. What is the rider spoken of in this letter to Mr. Whitney? A. That is the rider which is attached to the contract stating that the contract does not go into force until the order of the Commission is finally made.

Q. And do you understand that the order of the Commission is now in force? A. Well, sir, as I have explained, at the moment, I do not exactly know whether any further time is going to be allowed, but I presume it is in force to-day.

Q. Well, isn't it true that an application was made some two weeks ago for some further extension before the order should take effect and that application was either denied or not acted upon? A. I don't know as to that, Mr. Lewis.

Q. Have you a copy of a circular letter referred to in this letter? A. Yes, sir.

Q. Have you it with you? A. No, sir. I neglected to bring that.

Q. Will you produce such a copy? A. I will file that with you, yes, sir.

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Mr. Lewis.— The stenographer will note that Mr. Bolton will produce to-morrow the circular letter referred to in a letter written by him to Travis H. Whitney, the Secretary of the Public Service Commission, dated May 17, 1915. I offer in evidence copy of the letter of Mr. Bolton to Mr. Whitney.

(Received.)

Mr. Lewis.— I also offer in evidence the reply of Mr. Whitney to Mr. Bolton, written on the stationery of the Public Service Commission for the First District, dated New York, May 18, 1915.

"Mr. Reginald Pelham Bolton, 55 Liberty Street, New York.

"Dear Sir.— I have your letter of May 17, 1915, enclosing copy of your form C, in which you state that your corporation 'has decided voluntarily to place all its meters under the same system of testing for accuracy by the Public Service Commission.' I tried to make it clear to you when we had our conference that I was very doubtful as to the power of the Commission to test the electric meters belonging to private persons or corporations. I indicated in my opinion that the Commission had power to test any meters belonging to or furnished by public service corporations. Your company, for example, is not such a public service corporation. While your intention is undoubtedly good, you should place your dependence upon an impartial body to have meters tested until it no longer has power or duty to test such meters, and, accordingly, I suggest that that question be definitely settled before you furnish your customers or prospective customers with such a form.

"Yours very truly,

"TRAVIS H. WHITNEY,

"Secretary."

Q. Mr. Bolton, is not the net result of the order made by the Public Service Commission to impose upon the consumer a burden in one form or another substantially the same as it was or perhaps even greater than it was before the order was made? A. I would

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say to that, no, sir; not to that extent. Upon those consumers in the form of landlords who had heretofore enjoyed that privilege, that gratuitous privilege, of the provision of sub-meters without cost, a burden was imposed. Their limited number I have explained to you.

Q. Now let me ask you right there. You say that a burden was imposed, and isn't it almost a certainty that that burden will be shifted from the landlord to the tenant? A. Well, sir, in so far as the company is concerned.

Q. Well, leaving the company out of it. Isn't it almost a certainty that any additional burden imposed by the company upon the landlord will be shifted by the landlord to the tenant in one form or another? A. I do not think it would be fair to the landlord to make that broad assertion, Mr. Lewis, for the reason that the landlord is confronted with this situation here, seeking to adjust themselves to a matter of making these arrangements with us, which, while it has the effect of reducing the profit made in this direction heretofore, still leaves them in a good many cases with a profit. Now, whether the landlord would seek to impose upon his tenants the loss of additional profit that that represented, of course it is impossible to say. But let me say this — that the only way that the landlord could do that would be by an increase in rental, and under existing conditions in New York city, that is almost impossible to-day to raise the rental, and so I say the situation with my knowledge of real estate, it looks to me it is a reduction in the profits made in a certain number of buildings by the owners of those buildings.

Q. Well, doesn't your company operate to deprive the landlord of some portion, if not all, of the benefit which the reduction in rate was designed to accomplish? A. Well, sir, that would be a rather unfair construction to place upon our service, which is intended to help the landlord to avoid capital expense and to relieve him of detailed management to that extent. In other words, I think we are only asking a fair return for what we are going to give, and I think that the landlord also recognizes that what he is going to pay us is of good only to him. It is certainly a reduction of what he was making before.

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Q. Now, taking an apartment house with twenty apartments, that landlord would be required to purchase twenty meters, wouldn't he? A. Yes, sir.

Q. Now, twenty meter installations there might cost him two hundred dollars? A. Yes.

Q. Ten dollars would be about the outside figure? A. Yes, sir.

Q. It would cost him even less than that — but, say, two hundred dollars — is that regarded as a serious burden by the landlord owning a twenty-apartment building? A. Yes.

Q. An investment of two hundred dollars in meters? A. Yes. He is more than glad, as we find it, to get rid of that. And I would like to qualify that by making the statement that we find where there are so few meters as that, it rarely pays the landlord to have our service or any other. Better for him to abandon it. It is only where you get meters in a loft building, where the meterage is larger and usage is greater, and consequently more investment involved. I follow you up to that point. Now, if it is an apartment house of one hundred meters, there might be something in it for the landlord.

Q. Well, let us take an apartment of one hundred meters, that would involve an investment of one thousand dollars, and with your rate of interest of 6 per cent, it would mean an overhead charge of sixty dollars a year? A. Yes, sir.

Q. Now, he is going to pay you for your service fifty to sixty cents per month an apartment? A. Yes, sir.

Q. Suppose he pays you fifty cents a month, that means fifty dollars for one hundred apartments a month? A. Yes, sir.

Q. That is six hundred dollars a year? A. Yes, sir.

Q. Now, what does he make off that six hundred dollars? He saves on the sixty dollars on the investment of meters. What else does he get? A. The cost of upkeep of the meters. We take care of them.

Q. Is that a serious burden? A. It is something that has got to be taken care of. It is an unknown quantity to the landlord.

Q. Well, is it an unknown quantity, or one of the quantities he cannot possibly know? A. I think it is something he knows very little about. Then we also make these periodic tests in order to save —

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Q. Your contract does not provide for anything more than tests once a year? A. That is true. That is sufficient for a guide, to watch the condition of the meter.

Q. Now, isn't it true that for a very moderate fee, the Public Service Commission would send an official inspector to inspect the meter? A. Yes, sir, that is true.

Q. And isn't your charge, fifty cents a month on each of a hundred apartments, a pretty excessive charge for that service, inspecting meters? A. I think not, sir, when all the circumstances are taken into account and every advantage also, than when an operation —

Q. Let us take that blue sheet, for instance; the only thing you agree to do there is to furnish the meters,— what is your price under that contract per month? A. That would be fifty cents.

Q. Now, you furnish the meters under that contract to each of one hundred apartments in one apartment building? A. Yes, sir.

Q. That means that you get fifty cents a month from each of one hundred, or fifty dollars a month? A. We get fifty cents from the owner.

Q. That means fifty dollars a month? A. Yes, sir.

Q. That means six hundred dollars a year? A. Yes.

Q. Now, what do you give to the landlord who pays you six hundred dollars a year, in exchange for your service? A. We give him the use of those meters in which he otherwise would have to sink his money, and we save his money during the life of those meters. You see now that is a very serious point. He has got to not only invest his money in those meters, but it is not a permanent investment.

Q. What is the life of a meter? A. About six years.

Q. Then he has got to get about 15 per cent of the value of the meter in addition to the rent in order to amortize the meter? A. That is true with the exception of these meters which are already second meters, and their life has already —

Q. Then you are going to furnish second-hand meters instead of new meters? A. Yes, but we take the responsibility of replacing those meters when those meters become antiquated and no longer serviceable, and that is part of the service for which we charge.

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Q. This looks pretty good to some people when it is brought to their attention? A. To so many real estate owners it has appealed. that we have had this large number of contracts signed.

Q. It looked pretty good to some people who wanted to get into your company with you? A. Yes. To the fellow I mentioned, who did not want the rate as low as that.

Q. Now who was there besides Mr. Greene who came to you and asked for an opportunity to go into your corporation? A. No one else.

Q. Did Mr. Maltbie call upon you and ask? A. No, sir. I never saw Mr. Maltbie on this matter at all.

Q. I understood that you had been quoted as saying that Mr. Maltbie called on you in connection with the matter. A. No, sir. I hope you will contradict that.

Q. I understood you had made that statement. A. No, sir, I never did.

Q. In justice to Mr. Maltbie, the record should show that that statement is not so. A. Please do so. That is not so.

Q. Well, Mr. Greene wanted to get into your company? A. Yes, sir.

Q. And you declined to let him in? A. Yes, sir.

Q. And it was Mr. Greene's purpose to charge the landlord an even higher price than you charge them? A. Yes, sir. He complained that was a low rate.

Q. What rate did he think he ought to have? A. I don't think he named any figure. He named that as too low, according to his view. I have figured this thing very carefully, and I concluded we could see our way through and make some money, which was our purpose, as well.

Q. How long have you known Mr. Forgee? A. About six years — five or six years.

Q. What has been his business? A. Mr. Forgee was in consulting practice when I first became acquainted with him. Independent engineer, and he and I formed an association which has continued up to the present time.

Q. And was the Edison Company one of his clients? A. No, sir.

Q. Never? A. No, sir. He had been at one time in the employ of the Edison.

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Q. How long ago? A. About eight years ago.

Q. And has the Edison Company been one of your clients? A. Yes, sir.

Q. How recently? A. They are my clients now, and other companies, and of course a great many other people.

Q. The United Company a client of yours? A. Has been a client of mine, yes, sir.

Q. Is now? A. I would not say they were at the present moment because we have not anything in hand for them at the present moment.

Q. You have had recently? A. Within the past six months.

Q. And did you discuss with any of the officers of the Edison Company, the propriety of your organizing this corporation? A. No, sir, I did not. I informed them that I was doing that and I had made up my mind to do so.

Q. You informed them that you were about to enter into this organization as long ago as last May? A. Yes, sir.

Q. And that was before the order of the Public Service Commission was granted? A. Yes, sir, it was.

Q. And after you had been advised by Mr. Whitney that it would be granted? A. I had only the information that I got it from Mr. Whitney's conversation with me, sir, and the point apparently in his mind and I think that the point in my mind was the practice that has obtained in all other cities and had been discarded and would undoubtedly be discarded here, and I venture to say that it is very popular that it should be brought to a conclusion.

Q. Under this order made by the Public Service Commission the companies benefit very largely? A. As regards the sub-meter they benefit to the extent that I have mentioned. That is in so far as those meters themselves were charged upon their expenses they gained and they also get their capital in part returned.

Q. Well take the Edison Company for instance,— it had in existence on the 31st of December approximately 40,000 of second-hand meters in use, had it not? A. I should say that there might have been last summer. A great many since that time have become direct consumers and that is also the case with the United. A great many of the landlords have ceased the practice of sub-metering all together. And the tenants are now served direct by the

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two companies. I am under the impression, and this is rather of an impression, that there might be about 20,000 meters that are still on sub-metering service.

Q. How many meters are the Edison Company going to sell as the result of this order? A. I should say, somewhere between 11,000 and 20,000.

Q. Where do you get 11,000? A. Well, I looked at our own contract up to the present time as covering about 8,000. I know others that are prospective who have not finally decided yet, which might bring that to about 11,000, and I should think myself there might be about 20,000 all together.

Q. You have arranged for about 40 per cent already? A. Yes, sir.

Q. And the balance has hardly gotten into its stride, has it? A. Our toestep is to-day with them.

Q. You expect to get all of the 20,000, I suppose? A. Why we certainly are going to get a good share of them, and we believe that the large majority of them will come our way.

Q. And you are going to buy these meters from the Edison Company to save the landlord from investing his money? A. Always with the provision that if the landlord does not find the service satisfactory he can take them by making a small allowance for the time being.

Q. How is that safeguarded? A. Sometimes by a special agreement endorsed on the contract or something of that kind.

Q. Was the Edison a party to that agreement? A. No, sir, nothing to do with it. It is between us and the landlords entirely. We are as I told you — we cannot even buy those meters excepting from the landlord. He has got to pay for them and we have to go to him and take them off his hands.

Q. That is, you merely furnish the landlord enough to make the payment and get a bill of sale which he will transfer to you? A. I don't think we even follow that process. So far as I know, we would have to let them make the transaction themselves and we take them over afterwards. But we are prepared to do whatever is right in that regard.

Mr. Lewis.— We will suspend with Mr. Bolton now.

Chairman Thompson presiding.

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WILMER W. SALMON, recalled for further examination.

Examination by Mr. Lewis:

Q. Mr. Salmon, your bid, the bid of the General Railway Signal Company, was submitted to the New York Municipal Railway Company on or about the 17th of August? A. September.

Q. 17th of September? A. Yes, sir.

Chairman Thompson.— That was the date it was opened, wasn't it?

Mr. Salmon.— It was submitted at the time of the opening.

Q. They were called for originally on the 10th, in the letter soliciting proposals it was stated that they would be received on the 10th? A. I believe so.

Q. And then there was a postponement or delay granted at the request of someone for a week. Was that your company made the request? A. I think there was more than one company joined in the request. Our company requested a delay of three weeks or to October 1st. We were given a one-week extension.

Q. And the contract was awarded by the Brooklyn Rapid Transit Company so far as it could award it on what date? A. I think we received notification the latter part of October that they had asked the approval of the Commission for the award to us. Not of the contract as covered by the original proposal, however.

Q. Well that report was embodied in the letter of President Williams of the New York Municipal Corporation dated October 21st? A. I think that's so.

Q. Had you had any notice prior to that time of the fact that the contract had been awarded to your company by the railway company? A. No. I think the first notice we received was written notice from the railway on the day following that, I believe.

Q. Well, now where had you been spending your time between the 17th of September when the bids were presented and the 21st of October when the contract was awarded? A. Practically all in New York. I might have been away for a Sunday or something of that sort, but practically all of my time was spent here.

Q. Were you in telephonic communication with your office at Rochester? A. With my Rochester office?

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Q. Yes. A. Why, I suppose so, Senator. I am always supposed to be when I am here subject to call.

Q. Have you any recollection of any unusual use of the telephone between New York and Rochester during that period? A. No.

Q. Will you tell us of any reason for telephone slips representing the calls between your Rochester office and New York city should have been destroyed? A. No, I do not know that they are destroyed and I don't know that it is not our custom to destroy them. I know nothing about that, absolutely nothing.

Q. The statement has been made to me that the slips representing long distance communications between your Rochester office and New York city covering that period only had been destroyed and the duplicates retained by the company itself had been destroyed,— have you any knowledge of such a thing? A. I do not know it and I do not believe it. It would be a most remarkable thing if it were true.

Chairman Thompson.— Well, will you produce those slips?

Mr. Salmon.— Well, I don't know whether I can. I do not know how they do these telephone things. I don't know a thing about it. I do not even know who is supposed to keep those slips. I am not a telephone man. I don't know whether I can produce them or not.

Chairman Thompson.— Well, if the telephone company gave them to you, you can produce them if they are not destroyed. The telephone reports that the duplicate slips as well as the original slips were given to your company.

Mr. Salmon.— Do they report also that other slips preceding and following have not been destroyed?

Chairman Thompson.— Well, we asked for those slips and that was what we gathered from them. Of course, if you will produce the slips that's all there is of it.

Mr. Salmon.— If you will make a memorandum I will take it up.

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Chairman Thompson.— There is no need of making a memorandum. The telephone slips from Rochester office to New York during the months of November and December, 1914.

Mr. Salmon.— All right, sir.

Chairman Thompson.— The telephone company reports that the originals and duplicates at your request were given to your company.

Mr. Salmon.— If that is unusual I do not believe it. I want to state that right now.

Examination resumed by Mr. Lewis:

Q. I don't think that you told us the other day, Mr. Salmon, anything about the acquisition by your company of the Ford patent, did you when you were on the stand? A. I don't recall, Senator.

Q. I don't recall myself that you did. Will you be good enough to tell us the motives which actuated you in recommending the acquisition of purchase of those patents? A. That actuated me in recommending it?

Q. Yes, as the executive head of the company? A. Well, I did not especially recommend it. It was recommended to me by my people.

Q. Well, I suppose you took that up with your board of directors? A. I may have done so.

Q. Will you tell us about the purchase of the Ford patent? A. Why as I recall it, sometime during the middle of December my attention was brought by Mr. Finucane to a certain patent known by us now as the Ford patent. And he brought me marked copies of these patents, which on my return to Rochester as I recall it, I turned over to our resident patent solicitor. And subsequently, very shortly afterwards, I think, he came to New York city and saw the owner of the patent, and on the 18th of December reported to me that he would advise that if we could obtain the patent at any reasonable price or exclusive rights under them, that we take them. On the 19th our consulting engineer made a similar report. On the 22nd as I recall, Edwards, Saeger and Wooster, who by the way, had been brought into the matter, asked for funds to

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negotiate this thing on the best terms that they could, and on the 24th of December the funds were sent to them, and subsequently, I think on the 26th, I received the proposed form of contract submitted by our chief patent counsel, Edwards, Saeger & Wooster, and signed as requested. The agreements were submitted and returned and subsequently was advised that the deal was closed.

Q. Now, when was Ford patent first brought to your attention? A. Well, I heard it testified to here that they were first brought to my attention some six or seven years ago. I had forgotten that. I heard Mr. Ford testify to that.

Q. Had you ever seen Mr. Ford until you saw him on the stand? A. No, I don't recall having seen him before until a few minutes before he came up and introduced himself to me.

Q. Did you examine the copies when they were sent to you? A. Seven years ago?

Q. No. December, 1914? A. When those marked copies were turned over, I read a few of the claims, which struck me as being very broad, and if they could be sustained, that they might even be controlling, but I don't think that even then or up to date I have ever read the specifications.

Q. To whom did you refer them for an examination and opinion? A. To Mr. Lyman E. Dodge, our Rochester resident patent solicitor; to Edwards, Saeger & Wooster; to C. E. Edwards; to our consulting engineer, Mr. Edward L. Dodson, and possibly others. I have seen written reports from them, so I know I referred the matter to them.

Q. What was the tenor of those written reports to those three? A. I think we have them here. Broadly, they were of such a nature as to lead me to furnish the moneys requested by Edwards, Saeger & Wooster to accomplish purchase or secure license.

Q. If I recollect right, the terms of the purchase of the Simmen patent, fifty thousand dollars, in installments, and royalties in addition? A. That I would have to refer to the contract for.

Q. We have the contract here. I was just wondering.

Chairman Thompson.— Mr. Wilcox is here representing the General Railway Signal, and if there is no objection, I suppose at the end of your examination, if Mr. Wilcox wants to interrogate the witness, I am disposed to let him.

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Mr. Lewis.— No objection at all.

At this point Mr. Lewis read into the record the following letters, one dated December 18, 1914:

"Mr. Salmon: In accordance with your instructions, I have very carefully considered the Hannibal C. Ford patents 809,794, dated January 9, 1906, and 815,086, dated March 13, 1906. I am still of the same opinion as that expressed to you on the 17th instant, which is that the Ford patent 815,086 above mentioned is for such a radical departure in the automatic speed control of railway trains, and contains claims of apparently so broad a scope, that, regardless of whether or not the so-called Simmen system would be an infringement thereof, that a skillful and able patent attorney could at least make it appear to a court that it would be an infringement thereof. If the title to it could be obtained by the General Railway Signal Company at a reasonable price, it should certainly be done.

"Yours respectfully,
"LYMAN E. DODGE,
"Patent Solicitor."

Also letter dated December 19, 1914:

"Mr. Salmon: In compliance with your verbal request, I have carefully examined the Ford patents Nos. 809,794 and 815,086, and compared them with the Simmen system as we proposed to install it on the B. R. T. These patents would be exceedingly dangerous to us if they were in the hands of our competitors, because I am certainly of the opinion that the Simmen system infringes several other plans. Further, it seems to me quite possible that a system of speed control might be developed from the Ford patents, which, if not better than, would be at least a dangerous competitor to the Simmen system.

"Yours,
"F. L. DODSON."

Q. Who is he? A. Our consulting engineer.

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Mr. Lewis.—Also letter dated December 22, 1914:

"General Railway Signal Company, Rochester, New York.

"Gentlemen: Regarding Ford patents 809,794 and 815,086, and the claims made thereunder, we think you had better send us a check for ten thousand dollars in order that we may have funds at our disposal to adjust the matter on the best terms that we can. Upon reaching an adjustment we will report to you in the matter.

"Yours very truly,

"EDWARDS, SAEGER & WOOSTER.

"O. K. W. W. S."

Also letter dated December 24, 1914:

"General Railway Signal Company, Rochester, N. Y.

"Dear Sirs: Ford patents 809,794 and 815,086. Referring to your letter of December 22d, enclosing herewith two copies of license agreement which Mr. Baldwin, the record owner of the patents, is willing to make with the General Railway Signal Company, we consider that the agreement is an advantageous one for the General Railway Signal Company, and would advise its acceptance in its present form. If the agreement is acceptable to you, please sign both copies and return one copy to us, which we will deliver to Mr. Baldwin, together with the ten thousand dollars asked for in our letter of the 22d instant.

"Yours very truly,

"EDWARDS, SAEGER & WOOSTER."

Q. Were you informed of the existence of the Ford patents at the time the contract was awarded to you on the 18th of December? A. On the 18th?

Q. Yes. A. Oh, yes.

Q. You had known of that prior to that time? A. Yes. As I recall it, it was about — some time between the 10th and the 15th of December that this matter was brought to my attention. Although I had personally long before that heard of the Ford patents.

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Q. Had you any knowledge of the character of the Ford patents on the 5th of November, 1914, when you made your final contract with the Simmen Company? A. No. I had no knowledge, no working knowledge, no report on the thing at that time, such as the reports have been made here.

Q. Did you ever ask of your engineer or of your patent solicitor or your patent counsel an explanation of their recommendation that you purchase the Simmen patent, with the Ford patents outstanding and likely to be controlling? A. I do not catch that.

Q. You purchased the Simmen patent on the recommendation of your patent counsel, and your engineers? A. Yes, sir.

Q. At the time you purchased them, it was a fact that there were outstanding the Ford patents? A. Yes, sir.

Q. Subsequently you were informed that the Ford patents controlled or might control the Simmen patent? A. Might be.

Q. Or might be dangerous? A. Might be dangerous if left outstanding.

Q. Did you ask of your engineer or of your counsel any explanation of their recommendation that you purchase the Simmen patent, with the knowledge that they probably had as patent solicitors and experts of the existence of the Ford patents? A. I don't think so, because I would quite well appreciate myself without asking their advice on that, that we, making a purchase of the Simmen patent, would perhaps find it to our advantage, in case we actually landed an order, not to add to our patent lines. It was the Simmen thing we really wanted. The other thing was something we needed for protection provided we were going to do work. You understand this may be a long reply, but had we not landed the Brooklyn Rapid Transit order or the New York Municipal, I think it would hardly have seemed to me wise to, in view of all of the arguments that we had advanced, and the excellent reasons which our engineer had shown for the adoption of the speed control system, I should have said, if with all those arguments, all those advantages, we could not secure the adoption of that thing, it was hardly worth our while to spend any more money for speed control patents at that time. But it was the securing of the Brooklyn Rapid Transit that made me feel it was worth while to protect ourselves.

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Examination by Chairman Thompson:

Q. You would not have bought any of these patents if you had not got in on this Brooklyn Rapid Transit? A. Is that a question or an assertion?

Q. I ask you. A. Well, I happen to be on record that we bought the Simmen patent whether we got that contract or not.

Q. Then you say you would have bought the Simmen patent whether you got that contract or not? A. Why, as a matter of fact, we did buy it before we got the contract. The record also shows that.

Q. What do you mean — what shows that you bought it before? A. We entered into the agreement and made our payment on the 25th of November, and we did not get the contract until some time in December.

Examination resumed by Mr. Lewis:

Q. Of course, it had been awarded to you by the Brooklyn Rapid Transit on the 21st of October? A. Yes, but on the 28th of September, or 27th of September, as I recall it, I had myself gone on record as stating that I thought we should have the Simmen system, or Simmen patent, regardless of whether or not the New York Municipal placed its order with us. The point being there, as I made it clear, that the study that we had given it in the period elapsing between our securing this option on the Simmen scheme, the estimates that we had made all indicated that we would be able by the use of that system to reduce the cost of installation on this particular order of more than a half a million dollars, to give the road increased safety; to greatly increase its capacity. And finding those facts and finding that to be true, it seemed to me that it was a thing which we certainly should control, should secure. And that was information which, so far as I am concerned, I never had before, nor any of our people had any concrete illustration before that of just what commercial advantage might be had in dollars or cents, or in percentages, out of the purchase of this thing. Now, one thing I would like to make clear here — my company had been importuned for years to buy what are popularly known as automatic stop patents. We never spent a dollar to acquire any automatic stop patents, because I have found that the automatic stop was something which added to the cost of automatic block.

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You had to have your automatic block plus your automatic speed, and having it, you reduce the capacity of your line under ordinary conditions and not increase it. So I instructed our engineer I would regard it commercially having very little value, but if they could get a system which will increase the capacity of the line, could be installed for that money, and just plain, every-day automatic block, it would certainly be a commercial proposition, and we ought to have it. And that is precisely the thing which followed up the casting up of our figures on the Brooklyn Rapid Transit. We found we could — we found we could increase the capacity, increase the safety of operation, and decrease greatly the cost of installation and maintenance, and it seemed to me a thing that would do that was worth spending some money.

Q. And those were the reasons for purchasing the Simmen patent? A. Yes, sir.

Chairman Thompson.—Any other reasons?

Mr. Salmon.— Why, I shouldn't wonder if there were.

By Chairman Thompson:

Q. What were they? A. I wouldn't want to say those were the only reasons in the hurriedly given statement I have made. There may be other reasons which I do not recall at the moment.

Q. And those reasons were reached, or conclusions were reached as a result of the study which you obtained before the option was taken or after? A. As to the economical features of the cost of installation, it was not until the 28th of September, eleven days after this original bid went in, that we actually knew in dollars and cents what deduction could be made from the price on the original bid, due to the taking out of a great many needless units. That required the going over of, roughly, a half a mile of plans, I should say, the figuring of enormous quantities of materials, and it was not until the 28th of September that we really got down to the point of knowing actually in dollars and cents how many units of each kind could come out with no decreasing capacity under the system afforded by the original specifications. That was the thing — finding that it amounted to $516,000 out of a total of eighteen hundred thousand, that made a very strong appeal to me commercially.

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Q. Could those eliminations of units have been accomplished except with the purchase of the Simmen patent? A. I am not competent to answer that question. My chief engineer, who is here, advised me that he could not hear that ideal system which he had himself sought to obtain on applications for patents, without employing the principle disclosed in the Simmen applications with which we were in interference in January, 1913, I think it was, or 1914.

Q. I do not think you quite grasp my question. Assume that there had been no Simmen patent in existence, could there have been any such elimination of units? A. Yes. We could have done it on Howe's scheme because Howe's scheme was identically the same as Simmen's, the Simmen's antedating Howe — Howe infringed on the Simmen's. Our chief engineer, independent of Simmen's, as I understand the matter, had arrived at identically the scheme discovered by Simmen, and we discovered that when we got into the Patent Office.

Q. Was his method ever applied? A. As I understand, Simmen had never applied it and we had never applied it.

Q. Never had been worked out? A. Not in detail, no.

Q. Where is Mr. Hewitt, do you know, Mr. Salmon? A. No. Do you mean the party from whom we procured a patent?

Q. Well, did you procure a patent from Mr. Hewitt? A. I think we had a patent or patents, or license under what we know as the Hewitt patent.

Q. Your books disclose a payment of $10,000, I think, or possibly $15,000, to Edwards, Saeger & Wooster, and show that it was for a speed control, and Edwards, Saeger & Wooster paid some one by the name of Hewitt — what was there about that? A. If it was put in the speed control account, if my understanding of the patent is right, it is wrong. As I understand, it has nothing to do with speed control.

Q. What is that patent? A. It is what we call an absolute permissive block patent, secured for litigation we started against the Union Switch and Signal Company, having nothing to do with this matter under inquiry. That is my impression. My attorneys could tell you as to that, exactly.

Q. That check was issued in the early part of the year 1915? A. I don't know.

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Q. My information is it was issued in March or April of 1915. A. I don't recall. April 26th.

Mr. Lewis.— I offer in evidence Check No. A-29,050, dated Rochester, N. Y., April 26, 1915. Pay to the order of Edwards, Saeger & Wooster, $10,000, figures and written out signed General Railway Signal Company, J. F. Braam, Assistant Treasurer, on the Hanover National Bank, New York, N. Y. Endorsed, Pay to the order of Robert Hewitt, Edwards, Saeger & Wooster. Again endorsed, Pay to the order of Nicholas M. Goodlett, signed Robert A. Hewitt. Further endorsed, Nicholas M. Goodlett. Cancelled 4–17, I guess it is. Attached is voucher dated Rochester, N. Y., April 26, 1915, General Railway Signal Company, to Edwards, Saeger & Wooster, April 26, 1915, $10,000, to apply on purchase price of exclusive license under the invention described and claimed in the Robert J. Hewitt United States application for patent, serial No. 599,131. Approved for payment, J. F. Braam, Assistant Treasurer. Received, April 27, 1915, by General Railway Signal Company, $10,000, signed Edwards, Saeger & Wooster, Robert J. Hewitt, by Nicholas M. Goodlett.

Q. I recall, Mr. Salmon, that the checks which I offered in evidence the other day, perhaps I did not have the endorsements entered upon the record. I suggested to the stenographer that he look it up, and he did not find it, and if you have those checks here I would like to make sure. A. Which, the Simmen?

Q. The Simmen check.

Examination by Chairman Thompson:

Q. Who is this man Hewitt? A. I don't know who he is. Never saw him as far as I know.

Q. Do you know anything about this patent — what this patent was? A. I understand it has to do with what we call absolute permissive block. I never read the patent.

Q. Some relation to speed control? A. No, no more than you and I are related, so far as I know.

Q. We have not our investigators in that subject. We have had a lot of other things to do. A. Mr. Edwards negotiated that thing. I remember just as I was going out to a golf game, he called me up on the phone and said we would have to have that Hewitt

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patent in the investigation. I said, "If you have got to have it, buy it." That is all I remember. I did not want my golf game spoiled talking about it.

Q. A matter of ten thousand dollars? A. Since I have been sitting before this Committee, I have O. K.'d expenditures of over ten million.

Q. That won't get you any better standing before the Committee. A. I hope it won't make it any worse.

By Mr. Lewis:

Check No. D829,511, September 10, 1914, issued to Simmen Automatic Railway Signal Company, and bears the endorsement Simmen Automatic Railway Signal Company, B. J. Simmen, President.

Check No. C20,996, dated December 8, 1914, for twenty thousand dollars, payable to the order of Simmen Automatic Railway Signal Company. Bears the same endorsement.

Check No. C21,153, dated September 8, 1915, for ten thousand dollars, payable to the order of Simmen Automatic Railway Signal Company, and bears the same endorsement.

Examination resumed by Mr. Lewis:

Q. Who is there that can give us the information about the Hewitt patent? A. Mr. Edwards.

Q. Is Mr. Edwards here? A. Yes, sir.

Q. Have you told us, Mr. Salmon, as fully as you care to, the history of the acquisition of the Simmen and Ford patents now — is there anything you want to offer on the subject? A. I don't know of anything, Senator. I would be glad to answer any questions I can, but I have tried broadly to cover the thing as well as I can remember it.

Q. Can your patent counsel or your signal engineer give any additional information? A. Yes. Our chief engineer could undoubtedly tell you something why he was led to conclude that we must employ the principle of the system and our counsel can advise you of why they said it was valuable, and we would have to have it, I suppose.

Q. Well, I haven't any further questions.

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Examination by Mr. Lawson:

Q. What was this Hewitt patent? A. I have just said, Senator, I don't know. I know this: It had to do with what we call automatic block signal and designed especially for signal automatic block in connection with what we call absolute permissive blocks. A scheme devised installed by us, and one in which we are stating certain litigations. Mr. Edwards advised me it was highly desirable we have this patent. Why it was I don't know. I had to employ people to advise me on those things, and I accept their advice.

Q. Have you any idea it was the policy of your company to buy up all these various patents? A. No, I don't suppose we buy one in a hundred or two hundred of the patents offered us. We only buy those things that really seem to us to have intrinsic merit or to avoid what we have sometimes gotten into, very costly litigation. In a single litigation we expended certainly over a half a million dollars, where, had we controlled a very simple patent, we would have avoided that litigation. Sometimes we have acquired patents for that reason.

Q. In other words, you term them as nuisance patents? A. Yes.

Q. Now, we have three on the record, the Ford, Simmen and Hewitt — are there any others that have been purchased right around that period? A. No, I don't think of any others purchased just about that period.

Q. Are there any others that have been purchased that bear on this speed control, on this contract with the B. R. T.? A. I think all our other applications are applications of our own employees.

Examination by Chairman Thompson:

Q. Have you purchased any other patents within the last five years? A. Yes, sir; I think so.

Q. On this subject — on any? A. Well, I could not answer that. Our patent counsel could tell you.

Q. Anything relating to the control of speed? A. Nothing that we term speed control patents.

Q. You never went into this speed control proposition until after you got interested in the contract of the Fourth Avenue? A. That is not quite correct, Senator. We had taken up the speed

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control, I think, easily two years before this Brooklyn Rapid Transit came up.

Q. Who with? A. Our own people principally, but more than a year before it came up with Simmen.

Q. When did you first take it up with Simmen? A. I think early in 1913.

Q. Where did you first see him? A. I never saw Simmen until, so far as I know — until this — your investigation was on.

Q. Where do you recall you first saw Simmen? A. I don't recall. I may have seen him at some convention or something. I don't think I ever talked with Mr. Simmen until after Mr. Dodge, on my order, went actively after Mr. Simmen to land these rights, it having been definitely stated, first by our engineer, that we had to have the principle, and by our patent attorney that we had to have this particular patent.

Q. When was that? A. That instruction was given after we received the request on the B. R. T.

Q. What date? A. I couldn't say. It was probably early in September or late in August.

Q. So that that engineer did not take it up until after you got the request of the B. R. T. with Simmen; and you never met Simmen until after that? A. No. I had hoped we could avoid paying out a lot of money on these patents, and our own engineers could give us what Simmen gave us. When they gave up the hope of being able to do it, I did get Simmen.

Q. Now, when was it you first met Simmen? A. I can't tell you, Senator. I could probably find it out by going over various papers. I should imagine. I think — but I am not sure of it — I think it was subsequent to our making our original tender.

Q. Where did you meet him? A. I think here in New York city.

Q. Whereabouts? A. Probably at the Waldorf.

Q. Can you give me the meeting? A. I think in September, or it may have been in October.

Q. Did you meet him more than once from that time on, between then and the 1st of January? A. I think I saw Simmen perhaps a dozen times during that period, because he was down a great deal consulting with Mr. Howe or Mr. Howe was con-

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sulting him, and I think I saw Mr. Simmen quite a number of times.

Q. Where did you meet him on these occasions? A. I usually met him at the Waldorf, because my work in connection with this was usually done there.

Q. Did you meet him any other place? A. I don't recall.

Q. You don't recollect any other place you did meet him? A. No.

Q. You had several talks with him? A. Yes, sir.

Q. And he also met Mr. Howe on several occasions when you were present? A. I don't know. He met him several occasions when I was present.

Q. Did he stay in New York right along? A. I don't know.

Q. You did? A. I was back and forth. I was in New York three-quarters of my time.

Q. You had quite a large portion of your organization here? A. We had some of our best estimators and engineers here.

Q. I think you said the other day you moved the best part of your organization down here? A. No, we did not do that. We had a large number of our estimators and engineers, whoever we needed.

Q. Who did you have here from your company? A. I suppose we may have had perhaps a dozen men at one time at work on this thing here.

Q. Who were they? A. Well, we had our Mr. Howe, our Mr. Werple, an assistant of mine, and Mr. Day — S. N. Day, I think, an electrical engineer. Mr. Phillips and others, perhaps, whose names I do not even know. Those men from our organization.

Q. And Mr. Johnson? A. Mr. Johnson was here part of the time. Mr. Johnson, I think, never did any work in connection with this thing except that I, in thinking it over, have recalled that he was the one who sought to get an extension of time from Mr. Menden or from Colonel Williams or whoever he saw.

Q. During that time did you have conferences with Colonel Williams? A. Yes, sir.

Q. How many? A. I don't know.

Q. Well, about how many? A. I don't know. Every time Colonel Williams wanted to see me, I saw him.

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Q. Did you have more than three? A. I am not going to say.

Q. I know, but on an important contract like this you can approximate whether you had three or a dozen. A. If you would like to have me tell, I will answer the question.

Q. Did you see him fifty times? A. I may have seen him fifty times and may have seen him three.

Q. We are not going to take your choice. You can tell us whether it was more than three times? A. If you want me to look it up, the various memorandum of meetings, but I am not going to guess just to suit you.

Q. I would like to have you do that? A. I am not going to do it.

Q. Do I understand you are not going to look up your memorandums? A. I said I would look up memorandums and I also said I would not guess to please you.

Q. You are not pleasing me by any of these things? A. I have done my best to answer your questions. I do not recall how often I saw Colonel Williams. I told you I would look up the record of meetings and try to advise you.

Q. Well, will you try and look up the records of the meetings and advise us? A. Yes, I will try.

Q. Did you meet Mr. Menden of the B. R. T.? A. Many times.

Q. How many? A. I will give you the same answer. In Menden's case I would perhaps be better able to make a guess. I was down here three months practically on that thing, and I should say probably I met Menden every two or three days.

Q. During all the time you were here? A. Yes, sir.

Q. Where did you meet Menden? A. In his office.

Q. Always? A. In their offices always, and occasionally I saw him a couple of times over to the Public Service rooms, and I do not recall meeting him anywhere else.

Q. Where did you meet Colonel Williams? A. In the offices of the B. R. T.

Q. Always? A. Always.

Q. And did you meet Mr. Johnson in the B. R. T.? A. The signal engineer?

Q. Yes. A. Yes. He was usually present at the meetings of Mr. Menden.

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Q. So you saw him about every day? A. About the same as I saw Mr. Menden.

Q. Did you ever see Mr. Johnson when Mr. Menden was not present? A. I don't recall.

Q. You don't recall any occasion? A. No.

Q. Did you ever see Mr. Menden or Mr. Johnson when Colonel Williams was not present? A. Yes, sir.

Q. Did you ever see Colonel Williams when Mr. Menden was not present? A. I don't think so.

Q. Mr. Menden was always present at your interviews with Colonel Williams? A. Yes, sir.

Q. But you had a good many interviews with Menden and Johnson when Colonel Williams was not there? A. Yes, sir.

Q. Was Mr. Howe present at all these conferences? A. I think Mr. Howe was present at practically all of these conferences.

Q. With Menden, Johnson and Colonel Williams, you think he was present at all? A. At nearly all and not improbably at all of them, because Mr. Howe had technical data which I had to have and I doubt I saw any of them without Mr. Howe.

Q. Did you see any other officials of the B. R. T.? A. Yes, their lawyer.

Q. What lawyer? A. Mr. Yeomans, their general counsel.

Q. How often did you see him? A. Not very often. Only a very few times.

Q. Where did you see them? A. At the offices of the B. R. T

Q. Who was with you then? A. All our own people — Mr. Howe.

Q. And all their own people? A. I think that the only times I saw Mr. Yeomans were the times when there was some general meeting and I think probably it was — I don't recall whether Mr. Yeomans was present at all of the general meetings that we had there or whether Mr. Williams — another attorney representing the legal end of it.

Q. Now, during this time — of course you were anxious to get this contract, weren't you? A. Very.

Q. This was the biggest contract up to that time you had bid on? A. No.

Q. Biggest contract you had — what was the biggest you had received? A. Electric zone, New York Central.

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Q. How much bigger was that than this one? A. About twice as big.

Q. That was from here to Harmon? A. Yes, and North White Plains.

Q. And that was your business here during those three months, to take whatever means, that is to say, whatever was necessary to be done — I am not insinuating in any way — to get this contract? A. Yes.

Q. That is what you were here for? A. Yes.

Q. And during that time you knew, didn't you, that the Public Service Commission was divided in reference to the matter? A. No, I did not, Senator. I paid very little attention to — in fact, up until the middle or latter part of November, as far as the Public Service Commissioners were concerned, they might as well have not been in existence.

Q. Why do you say that? A. Well, I had assumed as our propositions were made to the New York Municipal Railway, and we knew the railway people only in the transaction that they would attend to that part of the affair. To do whatever was necessary to have their own recommendations carried out.

Q. Your idea was to get the friendship for your bid or your company, to get the friendship of the B. R. T. or New York Municipal Railway? A. It was not a matter of friendship.

Q. In other words, to get the favor of those people? A. Well, we had it. We actually had it. We had the recommendation.

Q. Well, that was your business here to get the B. R. T. people to favor your company, and you thought if you got them to favor your company that they would take care of the Public Service Commission? A. Well, if I were stating my own idea myself, I certainly would not put it that way.

Q. Well, how would you put it? A. I would state, we were to find out first of all the sort of scheme that we thought would meet the approval of the B. R. T.; that we did work it and presented our project and got it approved; that we saw all of the people and had all the meetings and gave all the information to the general officers of the road, their engineers, their consulting engineers and engineers of the Commission. We went everywhere we were sent and did everything we were told by them to do in order

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to have everybody perfectly familiar with what we were doing, and then we merely waited for results.

Q. I say, you expected them to take care of the approval of the Public Service Commission? A. Certainly. They were asking approval. We were not.

Q. You say you saw the Public Service engineers? A. Yes.

Q. Whom did you see? A. I think the names of the engineers were Craven, Wilder, Turner, and then their consulting engineers, Gibbs and Hill.

Q. Did the Public Service Commission have consulting engineers at that time? A. Oh, yes.

Q. Outside of their own organization? A. Certainly. One of the most eminent firms of engineers in the United States— Gibbs and Hill.

Q. You saw them? A. Yes.

Q. Whom did you see in that firm? A. Both Gibbs and Hill.

Q. How many times did you see them? A. I saw them at these meetings, one or the other of the representatives. I remember distinctly of calling at their offices once with our chief engineer, to introduce Mr. Howe to Mr. Gibbs, whom I had known for twenty odd years.

Q. How many times did you see Mr. Craven? A. I think only once, as I recall it.

Q. Where was that? A. At the offices of the Commission.

Q. At his office? A. No — in a meeting. I think Mr. Gibbs was at one of the meetings.

Q. You never had any conference with Craven alone? A. Never had any conference with these people alone.

Q. Or with you and Mr. Howe? A. I think in all cases excepting Gibbs and Hill, our conferences were conferences with a body of these engineers, because it had been arranged to save duplicate work, that would get as many of their people together that needed explanation as possible.

Q. Where were those meetings held? A. The B. R. T. offices, and I think at the engineering offices of the Commission.

Q. Do the Public Service engineers attend meetings at the B. R. T. offices? A. I don't think they ever did, but I am not sure.

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Q. Any of them? A. No, I don't think that any of those engineers ever attended any of those meetings at the office of the railway.

Q. Did you ever see Mr. Turner or these other Public Service engineers except in the Public Service Commission offices? A. I don't think so.

Q. You always saw them there? A. Yes.

Q. Did you ever talk with them privately? A. I don't think so.

Q. Ever talk with any of them, with you and Mr. Howe privately? A. I don't think so.

Q. None of them? A. I don't think so.

Q. Have you got memorandums that show dates of those conferences? A. Well, I think probably through Mr. Howe's records we could establish the dates of those conferences. He usually made a memorandum.

Q. Will you endeavor to do that for us to-morrow? A. Yes, sir.

Examination by Senator Lawson:

Q. You have said that the contract with the New York Central was twice the size of the New York Municipal Railway? A. Yes, I think it was about twice the size.

Q. Will you tell us how much money your company spent for patents, speed control, or otherwise, in connection with the New York Central? A. Well, I should say a little more than a million dollars. We got out very cheap on the New York Central.

Examination by Chairman Thompson:

Q. You paid for your patents in relation to the New York Central? A. For patents and defense of patents and building up.

Examination by Mr. Lawson:

Q. I am talking of patents you purchased outright? A. That I could not answer. I can by looking it up and give you that information. It was in 1905, ten years ago.

Q. We would like that in comparison with the New York Municipal.

Examination by Chairman Thompson:

Q. Did you ever confer with any of the Public Service Commissioners? A. Never alone. I had a letter of introduction to Mr. J. Sargent Cram, as I remember the name.

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Q. That name sounds familiar? A. Which I presented. I think toward the end of November or early in December following, a hearing, a public hearing at which Mr. Renshaw of the Federal, a letter of protest was read. I felt that my company's actions in respect to this whole matter had been misstated and that the actions were misunderstood, and I asked for an opportunity to present our case to these people. I had a letter of introduction from our Mr. Finucane to Mr. Cram and also Chairman McCall, who had requested that I come down with our chief engineer and meet him and certain of the other Commissioners who wished to be there, and their engineers, so he could come to have a correct understanding of what it was that we had done.

Q. Did you meet Commissioner Cram? A. I presented my letter to Commissioner Cram and tried very industriously to tell him what it was all about.

Q. Then you did meet him? A. Yes, I did meet him.

Q. Where did you meet him? A. In his office.

Q. And who was with you? A. No one. Mr. Howe sat out in the anteroom. I had about four minutes, I should say, with Mr. Cram, and made up my mind I was not going to get anywhere with him, and made up my mind he knew more about my story than I did and I quit.

Q. He subsequently voted in favor of your contract? A. So I was told.

Q. And you saw Chairman McCall? A. Yes, I met Chairman McCall the following day, I think it was, along with Commissioners Wood, Williams and Mr. Gibbs or Mr. Hill, I am not sure which one of them was there then — the consulting engineers, and I had with me my own engineer, Mr. Howe.

Q. And where was that meeting? A. In the room where the public hearings were had.

Q. Was that a formal or informal hearing? A. I should say it was rather an informal hearing, brought about through my request that we might have an opportunity to correct what I regarded as absolutely incorrect views as to what we had done — what our proposition was and all that sort of thing.

Q. When was that meeting? A. That was very early in September. I can say the date I think —

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Q. Did they keep a record of it at the Public Service Commission? A. I don't know whether they did or not.

Q. Did you ever see any of the other Commissioners at any time? A. I saw at the public hearing held about the middle of November, Commissioner Maltbie at one of the meetings. At one or another time I had the great pleasure of seeing each of the five Commissioners.

Q. When was that, at a public hearing? A. Yes.

Q. When was that? A. Well, the first time — let me get this straight. The middle of November, I think, Commissioner McCall presided, and read a letter of protest, and Commissioners Williams, Wood and Maltbie were present. At the second public hearing, early in December, Commissioners McCall, Wood and Williams were present. Commissioner Maltbie, I think, was absent. I never had the pleasure of seeing Commissioner Cram at one of the meetings. I did meet him, as I say, for four or five minutes in his office.

Q. Then you never was at a public meeting when they were all there? A. I seemed doomed to disappointment.

Q. Now, did you ever meet any of the Public Service Commissioners at any other time? A. No. I think I never have seen them except, over here the other day, Commissioner Wood. I think I have never seen any of the Commissioners outside of the office of the Commission.

Q. Now, wasn't it apparent to you — didn't you know along the latter part of November and in December, and before the vote was taken, that the Public Service Commissioners were divided on the question of whether they should award this contract to the Federal people, or they should award it to you? A. No, Senator, I did not. I did not see but that intelligent men should vote to award that contract to us.

Q. You did not know they were divided on it? A. No.

Q. And you had no information that the Public Service Commissioners were divided prior to the day they voted? A. I did not even have the information then until after the newspapers announced the fact. You understand I have not been interested in politics.

Q. You have been interested in getting contracts? A. In getting this particular contract.

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Q. And you knew in order to get this particular contract you had to have more votes than the other fellow had? A. Not on that occasion.

Q. You knew, didn't you, that you could not have gotten this contract except the Public Service Commission, or, at least, the majority vote approved it? A. Some time; not necessarily then.

Q. But you knew that they had to approve and you knew that a majority of them had to approve the other fellow's contract? A. They had no contract. There was no recommendation before them. They could have vetoed this or accepted ours.

Q. Didn't you know they could have rejected all bids and demanded that the B. R. T. advertise new? A. Yes, I was advised they could.

Q. They had that power? A. Yes.

Q. And could have exercised it, regardless of the recommendation of the B. R. T.? A. I don't think they could.

Q. And didn't you know that question came up in the Public Service Commission? A. No.

Q. And you didn't know that the vote was divided on that? A. No.

Q. You didn't know how the Public Service Commission stood? A. I did not follow up or seek to follow up the attitude of the Commission except in one way, and that was by appearing before these people publicly and stating our case and leaving it to be decided on its merits.

Q. Then you did know that you had to have the Public Service Commission? A. No, I did not know.

Q. Then why did you appear before the Public Service Commission? A. I wanted their vote, but there was no assurance that they had returned the recommendation of the railway company, even if there had been a readvertising of bids. We would have gotten the order some time. We had the scheme of merit.

Q. And you came right down here in the innocence of Monroe county expecting your merit would land it, and never went into the question of how the Public Service Commission stood at all? A. No, sir.

Q. In three months that you were here, you did not busy yourself at all about that? A. What do you mean by busy myself?

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Q. Well, take any time or give any attention as to how the Public Service Commission stood, or was likely to stand? A. No attention beyond what I have told you that we appeared before these people fairly and sought to see that they would have a complete understanding of our proposition.

Q. Well, who told you to do that? A. I think that was asked by the railway people in the first instance, to be present at a meeting towards the middle of November. I believe that we got that information from the railroad people.

Q. You went because they advised you? A. Yes.

Q. And that is the only reason? A. Well, that was enough.

Q. Well, I assume it was, but I say I was wondering whether that was the only reason. A. I imagine in that case it was absolutely the only reason, because I did not know any other reason why we should go. I did not know what the meeting was called for.

Q. Now, was there any one in your company or your men here who gave any attention or any time towards ascertaining the sentiment of the Public Service Commission on this subject? A. I think not.

Q. You left that all to the B. R. T.? A. I won't say I left it. I simply assumed the B. R. T. would attend to its part of the business.

Q. Well, now, did you consult with any other engineers here except those you have named? A. Consult with about this contract?

Q. Yes. A. I think not. I don't recall.

Q. You know Mr. Waldon of the Interborough? A. Yes.

Q. Did you consult with him? A. No, I did not consult with him.

Q. What does it mean, the record in your office, to the effect that your concern paid him five hundred dollars for retainer? A. Mr. Howe asked my approval of retaining Mr. Waldon, and because of Mr. Waldon's very great experience, as he regarded it, and I regarded it as the largest experience that any signal engineer has had in this country with traffic problems of the sort found on the Interborough and likely to be found on the New York Municipal.

Q. Then you did retain him in this matter? A. We retained him.

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Q. Did you see him? A. No, I don't think I met Mr. Waldon in that connection.

Q. Who did see him? A. I think Mr. Howe; I am not sure of that.

Q. What did he do for your concern? A. I think he had several conferences with Mr. Howe, giving him information as — I would rather you get that information from Mr. Howe.

Q. I only want the information you have. A. I really have no information. I authorized the retainer of the man.

Q. Did you retain any other engineers at that time? A. Outside of our own organization?

Q. Yes. A. No, I did not.

Q. Waldon was the only one retained? A. Yes, I think so.

Q. Now, do you know anything about entertainment of the engineers and officers of the New York Municipal Railway Corporation? A. So far as I know, the only entertainment that I personally took any part in with the officers of the B. R. T. was paid for by the officers of the B. R. T.

Q. What do these items on your books for expenses for entertainment of officers of the B. R. T. mean? A. I haven't looked those things over; I don't know. If you have the items, I will be glad to see them. I suppose our men who are with these people, they frequently have worked into the night together, and they would gather at noon sometimes, they would entertain our people, and our people would entertain them — six of one and half a dozen of the other.

Q. And the accounts were audited by your company? A. Yes.

Q. What was the object of that? A. Just ordinary decent courtesy.

Q. To entertain the employees of the B. R. T.? A. Yes.

Q. What sort of entertainment was it, what was it for? A. The only entertainment that I know personally anything about was the entertainment that was given me by the B. R. T. people over to the Hamilton Club.

Q. You have no personal knowledge on behalf of your company? A. I should hope our boys would have the decency.

Q. I say, do you know? A. No. I would not ask our fellows. I would assume right off the bat they would be courteous enough

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to entertain these people when the time came and in the right manner.

Q. You would not question their expenditures on that account? A. Why, any reasonable expenditure would hardly be questioned. I imagine, however, that if there were unreasonable expenditures they would be brought to my attention.

Q. What do you mean by reasonable? A. That would depend on circumstances. If it was a lunch and the people entertained were busily engaged on their work, I would say anywhere from fifty cents to five dollars apiece.

Q. Do you think an entertainment expense of sixty-nine dollars would be reasonable or unreasonable? A. For lunch?

Q. No. A. For how many people?

Q. For a man and his wife? A. For how long?

Q. For one day? A. I would not consider that unreasonable. I have spent more than that on my own personal account entertaining a friend lots of times.

Q. So those things would not come to your attention if they were not any higher than that? A. I don't think so.

Q. You have examined these expense accounts? A. I have examined the expense accounts of our department heads.

Q. Have you examined the entertainment and expense account of B. R. T. officials during this time? A. If that was done by the head of the department I would have examined it. If it was done by one of the subordinates I would not have done it. He would have done it.

Q. So you say you had no communication with the Public Service Commissioners during this time, excepting what you have related? A. We had no communications, Senator, directly or indirectly other than the straight, open and above-board communications in their room at stated times in such ways that we had nothing to cover up at any time or in any way.

Q. Did you have any other communications excepting the ones you have related? A. I do not recall any except as far as the Commissioners go, as far as the engineers go I have tried to state every time I have seen them.

Q. Did you ever see Mr. Banks? A. Yes, I have seen Mr. Banks.

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Q. Where? A. I saw him about twenty-one or two years ago in Chicago, and the next time that I recall seeing Mr. Banks is right here.

Q. Did you see him during the year 1914 here in New York? A. I don't think so. If I did, I did not know him.

Q. Did any of your employees or the employees of your company make any report to you that they had seen or talked with Mr. Banks? A. I never heard of Mr. Banks in any way, shape or manner during 1914.

Q. You never saw or talked with him? A. No.

Q. Or never heard of any employee of yours that did? A. No. I want to say this: I attend certain meetings where there are some hundreds of railway officials.

Q. I want to get you down to 1914? A. I might have been guilty of being in the same city with him, but I do not know it if I was. Absolutely did not know it.

Examination by Senator Lawson:

Q. Why do you say "guilty of being in the same city?" A. Why, after the talk here. You gentlemen seem very much interested in Banks and I am not. I know nothing favorable to or against Mr. Banks. I have not the pleasure of his close acquaintance. I knew him as I knew many men. I think he was connected with the battery business around 1895 or some such time as that in Chicago when I lived in Chicago. Mr. Banks called on me then, and I have no recollection of ever having talked with Mr. Banks or having had any business or any other relations with Mr. Banks until I met him up in these rooms the other day, and he came over.

Q. Has your company bought any equipment from him? A. I don't know.

Q. Has your company any account on his books with the Northwestern Construction Company? A. I don't know. I will be glad to find out.

Examination by Chairman Thompson:

Q. In any of these conferences that you had with the B. R. T. officials, did you ever hear Banks' name mentioned? A. No, sir; I did not. If I did I wouldn't have recognized it. I would not have connected Mr. Banks' name, even if I had known it.

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Examination by Senator Lawson:

Q. You would not have known who the Northwestern Equipment Company was? A. I don't think I would.

Examination by Chairman Thompson:

Q. In any of these conversations you had with the B. R. T. officials or engineers, was there any talk on the subject of how the Public Service Commission stood, or how they would vote, or what the Public Service Commission should do? A. In conference with the engineer?

Q. Yes. A. No, sir.

Q. Or the officials of the B. R. T.? A. No, sir.

Q. Or any of the — Mr. Menden, Mr. Johnson or Colonel Williams? A. No, I don't think so.

Q. Did you discuss the Public Service Commission in any way with either of those gentlemen? A. Mr. Menden, do you mean?

Q. Yes, or Mr. Johnson of the B. R. T.? A. No, I don't think so. I don't think there would have been any occasion to.

Q. You could not see any occasion for taking up that phase of it at all? A. Absolutely not.

Q. You never while you were here? A. Absolutely not.

Q. While you were here all the time for the purpose of trying to get this contract for your company? A. I probably was three-quarters of the time.

Examination by Senator Lawson:

Q. Well, Mr. Salmon, in your experience as head of the General Railway Signal Company, you had knowledge that the Public Service Commission in various States usually passed on such matters as this, particularly within the State of New York? A. From the form of the contract that was submitted to us in this case, I knew that the Public Service Commission would have something to do with this case. Just what it was I did not pay very much attention.

Q. Your contention was understood? A. No, that was not our part of it. We completed our part when we made our proposition except to that degree that we were called upon to furnish information for the recommendation of the railway people to the Public Service Commission and its engineers and consulting engineers. We were simply at their service.

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Q. You heard something in the testimony given before this Committee by Colonel Prout and Mr. Renshaw and Mr. Cade — they all took into consideration the attitude of the Public Service Commission? A. I do not particularly recall that phase of their testimony.

Q. You sat here while they were testifying, I recall that. Now, in view of that, would you say that your company was the only company in these negotiations that did not consider the attitude of the personnel of the Public Service Commission? A. There have been some things said here would strongly indicate we thought very different of the Public Service Commission than some of the other people did.

Q. But you would consider that? A. I would say as far as our being under any obligation —

Q. But did you consider the attitude of the personnel of the Public Service Commission generally in regard to these contracts? A. I would say, as I said before, I attended a public hearing at which the Renshaw protest was voiced. I thought at that time toward the middle of November, as I recall it, that the Commissioners appeared to be wholly at sea as to a correct understanding of what we had done, and what the other fellows had done. I solicited then an opportunity to come, to get before them information that would put them straight. Now, to that extent and in that way I did consider that. But up to that time, not at all, absolutely not at all. I did not up to that time of that meeting — I had not ever seen one of the Commissioners.

Q. Then you would say you did not consider the Public Service Commission from the same viewpoint that you now know the other companies considered it? A. I don't know how the other companies — I did not consider it in the way you have in mind. That we would have to do something. That we would have to call on these Commissioners — be good fellows. It did not occur to me in that sense at all. Beyond the one point of our soliciting an opportunity to know that they were absolutely adrift on the facts. We did solicit this opportunity to go before them openly and frankly and fully to state what the facts were.

Q. To that extent? A. Yes, we were interested in the Public Service Commission, and to that extent only.

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Examination by Mr. Wilcox:

Q. In view of the many suggestions that have been made regarding these various funds that went for patents, I would just like to ask you this general question, Mr. Salmon: Have you at any time paid or promised to pay to any public official or to any individual any sum of money or other valuable consideration of any kind, for any service or favor rendered or to be rendered by any public official in connection with the contract for the equipment for the New York Municipal Railway, or any of the proposed Rapid Transit lines in the city of New York? A. I have not.

Q. Have you at any time paid or promised to pay to any individual any sum of money or other valuable consideration of any kind for any services or favor rendered or to be rendered in connection with the influencing the award of any contract for equipment or otherwise for the New York Municipal Railway or any of the Rapid Transit lines in the city of New York? A. Absolutely not.

Q. Have you at any time instructed any person personally or by the means of any other individual in your behalf or in behalf of your company to offer payments to any public official or to any individual in the employ of any of the rapid transit railways in Greater New York for their influence or help in acquiring contracts for the equipment of the New York Municipal Railway or any of the proposed rapid transit lines in the city of New York? A. No, sir.

Q. Have you been solicited at any time by any public official or by any individual in the employ of any of the rapid transit railway lines in Greater New York, or by any other individual for the payment of any sum of money or other valuable consideration in return for influence or help in acquiring contracts for the equipment of the New York Municipal Railway of the proposed rapid transit lines in the city of New York, or has any suggestion been made to you to such effect by any individual, official or otherwise? A. No, sir; never.

Mr. Wilcox.— If you will permit me, I would like to say that Mr. Dodge, the solictor from Rochester, is here.

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Chairman Thompson.— We will hear him now. On the understanding that he comes here because he has to come and be heard.

Mr. Wilcox.— He negotiated the Simmen patent and he will also waive immunity so as to be able to answer questions.

Chairman Thompson.— We will hear Mr. Dodge, because Mr. Dodge has come here and insists on being heard. We have not sent for him and we do not care whether he testifies or not.

Mr. Wilcox.— But we assumed and I hope correctly, what this Committee wants is the truth. Now the papers have been filled with insinuations.

Chairman Thompson.— We will take Mr. Dodge's statement.

Mr. Wilcox.— Well, I am trying to say why we want him to be here.

Chairman Thompson.— This matter is not going to be closed to-day. We can take your statement.

Mr. Wilcox.— Will you have him sworn and have him waive immunity and hear his story or question him?

Chairman Thompson.— I have no questions to ask Mr. Dodge. He has sulked around here for a day or two and he wants to get away.

Mr. Dodge.— How can you tell that?

Chairman Thompson.— By your looks.

Mr. Dodge.— Do you want to swear me?

LYMAN E. DODGE, sworn as a witness, testified as follows, after having signed a waiver of immunity:

Chairman Thompson.— Now, you note the instruction of the Committee and that is, that you confine yourself to facts. Your statement will be a statement. There will be no two parts. It will be a statement of facts that you think are of importance in ascertaining the situation here or importance to your company. We cannot take your argument.

Mr. Dodge.— Well, the first fact is then — are you through?

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Chairman Thompson.— Do you want to state your first facts?

Mr. Dodge.— If you are through I would be glad to begin. If you are not —

Chairman Thompson.— It would be a very good idea to teach you that there is such a thing as courtesy.

Mr. Dodge.— Well, go ahead if you can do it.

Chairman Thompson.— I would hate to undertake it with you with the other important matters I have on hand.

Mr. Dodge.— The first statement of fact I would like to make here, I have been produced here by the General Railway Signal Company voluntarily, in order to testify as to the facts concerning matters with this committee of investigators. Now I should like to say first that I became connected with the General Railway Signal Company in October, 1910, as a patent attorney. That before that time I was an examiner in the United States Patent Office, examining the art relating to railway signals, switches and had been there something like three years and a half. My duties with the General Railway Signal Company were to file application for patents upon inventions made by the engineers of the General Railway Signal Company and others, and also to make myself so acquainted with the progress of the patent art relating to railway signals as to be able at any time to inform my superior officers as to the probable status in the patent art of any invention which might be brought to the attention of the General Railway Signal Company. As I now remember it, the first matter having to do with the automatic control of trains with which I had to do was connected with the General Railway Signal Company was the consideration of an invention submitted by one Mr. Finnegan. As I remember it, it was somewhere about June, 1912. At that time Mr. Finnegan approached the General Railway Signal Company stating to them that he had a system for automatic control of trains which he wanted the General Railway Signal Company to purchase his rights in. Those negotiations were not carried on by me but were reported to me by Mr. Salmon.

Chairman Thompson.— When was that?

Mr. Dodge.— In June, 1912, or thereabouts.

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Chairman Thompson.— What has that got to do with this matter of 1914?

Mr. Wilcox.— He is leading up to the first attention of the Simmen patent.

Chairman Thompson.— Well, when was the first attention to the Simmen patent, begin there.

Mr. Dodge.— I could not make my story complete.

By Chairman Thompson:

Q. Go ahead? A. To resume, this invention of Mr. Finnegan, he desired to sell to the General Railway Signal Company, for consideration of $50,000 and the signing of the contract.

Q. Who was that? A. Mr. George P. Finnegan, for the sum of $150,000 upon the expiration of the development period, and before the consideration of $10,000 minimum royalty for a period of ten years. Mr. Salmon put this matter before me and I immediately told him that if we desired to acquire the Finnegan right, it would be necessary to acquire what was known as the Shanosen patent. I found by reference to the Shanosen patent that the inventor was a resident of the city of St. Louis, State of Missouri. I reported this fact to Mr. Salmon, and he immediately gave me instructions to go to St. Louis and attempt to buy the patent. I did go to St. Louis, but unfortunately was unable to secure the patent, as Mr. Finnegan had been there before me, and bought it. Our negotiations with Mr. Finnegan extended over a period from June, 1912, up to about November, 1913, when they were finally dropped. From June, 1912, until the early part of 1913, our various conversations with the chief engineer of the General Railway Signal Company, Mr. Howe, concerning automatic train stops, automatic train control and speed control. Mr. Howe at that time told me that he had conceived a means which he considers was ideal for controlling the speed of trains. I urged him to put the material in such shape that it would be available to me to file a patent application. He did put the material in such shape and delivered it to me on February 8, 1913. This February 8, 1913, note of Mr. Howe's discloses every essential part or every essential element of what is now known as the Simmen patent system of

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automatic speed control. I immediately took this material and put it into shape on a patent application, which was acknowledged by being filed in the United States Patent Office on April 16, 1913. This application also showed very essential elements and ingredients of what is now know as the Simmen system of automatic speed control. The next important negotiation, and I say important because I am constantly having inventions submitted to me for purchase. In fact, there is probably not a week which goes by in which I do not have at least three, and it has been the case for all of the time during which I have been employed by the General Railway Signal Company. So I say the next important negotiation was that with Mr. R. M. Kaufman, of Pittsburgh, Pennsylvania. Mr. Kaufman appeared at my office in Rochester one day and disclosed to me what he considered a new, novel and most valuable, most valuable in fact, as he told me, system of automatic speed control. This was on September 11, 1913, one year before the negotiations with Mr. Simmen. Upon looking into Mr. Kaufman's system of automatic speed control, I soon saw that in principle it was absolutely identical with the scheme, or with the principles of the scheme for which I had filed an application for Mr. Howe six or eight months before — that was on April 16, 1913. Of course, at that time, I did not know Mr. Kaufman's date of conception. I did not know but that his date of conception antedated Mr. Howe's by months or years, and therefore, in order to be on the safe side, and in order to secure, if possible, this according to Mr. Howe's statement, most valuable invention for the General Railway Signal Company, I did not inform Mr. Kaufman that we already had an application on file in the United States Patent Office for such an invention. It took considerable negotiations with him. In fact, I went to Pittsburgh once which finally resulted in the contract being prepared. This contract provided for the payment of twenty thousand dollars a year minimum royalties, ten thousand dollars more than the Simmen contract later closed provided for, and also provided for one hundred dollars a car equipment, which was fifty dollars more than the Simmen contract later closed provided for. Although I met Mr. Kaufman and Mr. Salmon was with me at the time in the Hotel

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McAlpin, in October, 1913, we were unable to come to an agreement on the contract, and therefore did not close with Mr. Kaufman. The next important negotiations concerning the train control or speed control system were those begun with Maximilian Weil on October 3, 1913.

Chairman Thompson.— Cannot you make these records a little more brief?

Mr. Dodge.— There is only about two more of them. I think it will only take a short time. Mr. Edwards, of Edwards, Saeger & Wooster, introduced us to a Maximilian Weil. He had looked into the inventions which Mr. Weil had to submit, but before continuing negotiations with him, he desired to have the engineering staff of the General Railway Signal Company and myself look into the technical details of the matter. This was done, and after several months negotiations, they finally ended without any successful termination. I also want to mention that on October 17, 1913, five days before the negotiations ended with Mr. Kaufman, I wrote a letter to Mr. Salmon, calling his attention to the fact that Mr. Kaufman was probably not the first inventor of the invention which he desired to sell to us, and I requested Mr. Salmon to again give me instructions, or to give me instructions again to approach Mr. Simmen, to attempt, if possible, to enter into successful negotiations with him. That was on October 17, 1913, nearly a year before I begun approaching him. The next matter was an interference declared by the United States Patent Office, on January 20, 1914. This interference involved the Howe application to which I have called attention, the application of Simmen, under which we acquired a license later, an application of one Day, which was assigned to the Union Switch and Signal Company, application by Struebel, which was assigned to R. M. Kaufman, with whom I had previously had negotiations, and the application of one Patterson, a sporadic inventor residing somewhere here in New York City. This interference involved five parties — was an interference involving an invention containing all the essential ingredients of what is now known as the Simmen system of automatic speed control. Nearly nine months before I approached Mr. Simmen and attempted to acquire a license on his application. On March 17, 1914, I approached Mr. Simmen at Chicago at the time

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of the maintenance of way convention, and as at that time the interference was then pending before the United States Patent Office, I proposed to Mr. Simmen that we enter into sort of a partnership, and that we would cross-license each other,— that if we won out, that is, if the General Railway Signal Company prevailed in the interference, we were to give Mr. Simmen a license under the patent. If Simmen won in the interference, he was to give the General Railway a license, and we were not to spend money and time just in order to break down each other's case in the United States Patent Office. Mr. Simmen received me quite kindly, and he referred me to Mr. Brown at that time.

By Chairman Thompson:

Q. Why is all that? A. It is the Simmen contract.

Q. I am not interested in how Mr. Simmen received you. A. Mr. Brown at that time told me he would take my proposition under consideration, and that I might expect to hear from him in a short time. I did not hear from him, and I was very much troubled, and I was still more troubled when, on July 17, 1914, the United States Patent Office rendered decision in the interference which I have before mentioned, in which they declared that P. J. Simmen was the original first, and first inventor of the invention which we had been attempting to secure for nearly two years, and which our Mr. Howe, chief engineer, said was necessary in order to make a most ideal system of automatic train speed control. The next important negotiation was one begun with Mr. L. H. Thoolan.

Chairman Thompson.— I am going to say this. I am not going to stay here after six o'clock to-night.

Mr. Dodge.— I don't think it will be necessary.

Chairman Thompson.— I wish you would make this more brief. There isn't any necessity of going into this detail.

Mr. Dodge.— It is only going to take about a half an hour.

Chairman Thompson.— All this extra stuff does not impress me. I want to say I cannot give — I am doing this to-day to accommodate Mr. Wilcox.

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Mr. Wilcox.— I wish Mr. Dodge, if I may say to him, would be as short as possible. The whole purpose is to show the negotiation of the Simmen patent, which extended over a period of a year or so before this contract. Mr. Dodge is a little more prolix. If you can shorten and get down to the situation, I would like it.

Chairman Thompson.— The Committee can give you a whole lot of time later, but I understand you want it now.

Mr. Wilcox.— We would like to get it in.

Chairman Thompson.— Well, do not waste too much time.

Mr. Dodge.— On March 10th, we begun negotiations with Mr. L. H. Thoolan for an automatic train speed control. Those negotiations were continued until August 26, 1914, on or about the time that the requests for tender were made by the New York Municipal Railway. We closed an option agreement with Mr. Thoolan. We gave him five hundred dollars for his option, which extended for a period of forty days from August 26th. That is, we expected it would extend over the time when bids would be opened for this New York Municipal Railway Corporation signaling. This contract provided for ten thousand dollars within thirty days, ten thousand dollars on August 26, 1915, 1916, 1917 and 1918. Five thousand dollars a year from August, 1919, to August, 1924, and ten thousand a year from August, 1924, to August, 1934, so that the result involved much more money than the Simmen contract. It was while this option with Thoolan was still in existence that I was talking to the consulting engineer, Mr. F. L. Dodson, concerning speed control system, and we spent all of one afternoon talking about speed control systems. That evening, Mr. Dodson evolved a system of speed control, which he thought might be available for the New York Municipal corporation, and the next morning he went and showed it to Mr. Salmon. During that conference, Mr. Salmon came to his office, and the three of us talked about speed control, and the consensus of opinion was that everybody said the essential, the most perfect and ideal system of speed control was the Simmen, and Mr. Salmon said, "Well, then, why don't you get to Mr. Simmen?" "Well," I said, "I have spoken to you about it several times, but I have never had sufficient encouragement to warrant me in actually approaching Mr. Simmen,

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because he was liable to hold us up for a very big price." That was about September 1st, or 2nd, 1914. "Well," he says, "I do not see but what you better go up and find out what he wants for it, anyway."

Chairman Thompson.— That was the first time Mr. Salmon ever knew about the Simmen matter?

Mr. Dodge.— No. He knew about it the time we filed the Howe application, February 8, 1913, and, if anything, before that. But he did not know of it as the Simmen Speed Control.

Chairman Thompson.— The first time he knew of Simmen was along in this time in September?

Mr. Dodge.— I don't think so. I wrote a letter to him in October, 1913, nearly a year ago, in which I directed instructions to approach Simmen.

Chairman Thompson.— Where is the letter?

Mr. Dodge.— I can give you my copy of it here. I here produce copy of a letter dated October 17, 1913, and addressed to Mr. W. W. Salmon, in which I said, "If you do not believe it would be wise to communicate with Mr. Kaufman then kindly consider whether it would not be wise to again get into communication with Mr. Simmen, to the end that we may possibly enter into such an arrangement with Mr. Simmen that will enable us to secure the same rights which we expected to secure from Mr. Kaufman." I called Mr. Simmen up on the telephone and made an appointment with him I think for the next day. At any rate I went to Buffalo where Mr. Simmen resided and at which place Automatic Railway Signal Company has its place of business, and entered into negotiations with Mr. Simmen which extended over some four or five days. That was, I believe, on the 3rd, 7th, 8th and 10th and perhaps the 11th of September, 1914, during which time there were some four or five contracts drawn. I think I proposed the first contract and then Mr. Simmen proposed one and then I proposed another and we finally got down to a common basis and an option agreement was signed by Mr. Simmen giving the General Railway Signal Company —

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Chairman Thompson.— We have that in evidence.

Mr. Dodge.— That is in evidence.

Mr. Wilcox.— Was that the contract that was ultimately signed?

Mr. Dodge.— No. That was the option agreement. We paid Mr. Simmen $500.

Chairman Thompson.— That is all in evidence.

Mr. Dodge.— And the option was extended to November 17th.

Chairman Thompson.— Now, I told you we would not waste any time on that. The thing is in evidence and we can read it over easily.

Mr. Dodge.— It quite destroys the sequence of my story.

Chairman Thompson.— Go ahead with the next point in your story.

Mr. Dodge.— You interrupt the continuity of my thoughts.

Chairman Thompson.— I will have to interrupt it. I am not going to stay here explaining agreements that are on the record.

Mr. Dodge.— Well, the next negotiations I had with Mr. Simmen were when I settled the terms of the final agreement which was November 5, 1914.

Chairman Thompson.— You can state in reference to that anything that does not appear in the agreement itself.

Mr. Dodge.— I don't remember all that appears in the agreement myself.

Chairman Thompson.— I say if there is anything outside of the agreement you want to state it is all right, but what is in the agreement we have got that on the record.

Mr. Dodge.— As I remember it, I called Mr. Salmon's attention to the fact that it would be necessary for us to close that option on or about the 17th, regardless of whether or not we had obtained the contract for the New York Municipal Corporation's signaling. And I remember that on the 14th, I think it was the 14th of No-

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vember, after Mr. Salmon had given me instructions to close, and had signed two copies, that I called Mr. Simmen up on the telephone and he told me he would consider that we had accepted the option if I sent him that day, by registered mail, a copy of the contract.

Chairman Thompson.— And that resulted in the contract of November 24th which is on the record?

Mr. Dodge.— November 5th, that's when it was signed by Mr. Salmon. That was when it was signed by Mr. Salmon, but it was not sent until later by Mr. Salmon. While negotiating the Simmen contract, and especially during the interval between the 17th of September and 5th of November, I had consultations with the patent counsel, Mr. Edwards, of Edwards, Saeger and Wooster, of New York City. During my consultation with Mr. Edwards, which, of course, naturally turned to this option agreement, which had recently been signed, we had considerable talk as to the advisability of approaching the record owner of the Ford patent. The Ford patent is that one for speed control which has been introduced into evidence within the last few days. The consensus of opinion, both of Mr. Edwards and myself that it would be proper and highly desirable for the General Railway Signal Company to acquire the Ford patent, but we hesitated to make a move, as we were afraid that if either I or Mr. Edwards or any of his associates approached Mr. Ford, he would get wind of the fact that the General Railway Signal Company wanted to obtain and would be likely to place an abnormal high price upon it. We were very much disturbed about the matter, but did not know just which way to turn. We were in this state when somewheres about December 10th, or somewheres thereabout, Mr. Salmon asked me whether we ought to have the Ford patent. He told me — I say it was December 10th — it was before December 17th. As I remember, it was about a week before that, but maybe it was not. And I told him if we could buy that patent for a reasonable price, I should be very glad to have him get it, because it would relieve my mind. The reason why I wanted that patent was — was not necessarily because the Simmen system would be an infringement thereof, as because I believed if engineers of ability should put

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considerable time and attention into developing a system embodying the principle of the Ford patent, it might be very possible to construct an automatic speed control for trains which would be as valuable as a system constructed embodying the Simmen principle. So I did not desire to see a competitor of the General Railway Signal Company attempt to parallel the exploitation which we were then engaged in. At the same time I realized that the claims were apparently of an extremely broad scope, and consequently thought it would be the better part of discretion, to get the patent into our possession, so that there would be no possibility of a competitor at least obtaining possession of the patent, and perhaps attempting to sue us under the patent for something which we might later do. So when Mr. Salmon, on December 16, sent notice to me by Mr. Werple, that I was to appear in New York the next day, prepared to explain the Ford patents to somebody — he did not state at the time who,— I went to New York fully prepared with a copy of the patents and met Mr. Salmon at the Waldorf and he told me that I was to go to Mr. A. J. Baldwin's office at 27 Pine street, and tell him about this patent, because, he says, "As I understand it, he either owns this patent or can own it if he cares to, and thinks it is going to be used in the system of signaling which is going to be put in on the New York Municipal Railways contract, and you better go down and talk with him." So I went down and talked with Mr. Baldwin, and of course if he had something to sell, and my company had something to buy, I attempted to run it down all I could, and convince him it was as worthless as possible. I, at the same time, did not believe everything I said, although I may have believed some of it. At any rate — of course Mr. Edwards was acquainted with these facts, and was still prepared when Mr. Salmon took the matter up with him. I don't know exactly when that was — to give him advice, which I believe has been testified to by Mr. Salmon. Now, I don't know whether the Committee want me to explain to them what new principle I find in either one of these patents or not. If this Committee will indicate that desire in that respect —

Chairman Thompson.— How long will it take you?

Mr. Dodge.— Of course it has taken me about three years to thoroughly understand it. I don't know whether I can make it so

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plain and simple and talk just about the elementary facts in such a way,—

Mr. Wilcox.— I do not think you want to hear that to-day. I assume that Mr. Dodge will be at your call.

Chairman Thompson.— We will give him an opportunity later.

Mr. Wilcox.— There is only this thing, if you are not going to meet to-morrow.

Chairman Thompson.— We are going on, but we cannot take up this matter. We are doing this to-day to convenience you and let you go home.

Mr. Wilcox.— We have two others to-day, but we could not do it in a few minutes. Mr. Edwards, who conducted the negotiations for the Ford patents, is also here, and will be here whenever it is likely to go on. As Mr. Dodge is not going on in the morning, inasmuch as he conducted the negotiations for the Simmen patent, about which there seems to be a certain mystery, I would like to ask him one or two questions.

Examination by Mr. Wilcox:

Q. I would like to ask you, Mr. Dodge, if, in the course of your negotiations with Mr. Simmen, or with anyone else, regarding any patents, you have at any time paid or promised to pay to any public official or to any individual any sum of money or other valuable consideration of any kind for any service or favor rendered or to be rendered by any public official in connection with the contracts for the equipment for the New York Municipal Railway or any other proposed rapid transit lines in the city of New York? A. I have not.

Q. I would like to ask you if you have at any time paid or promised to pay to any individual any sum of money or other valuable consideration of any kind for any services or favors rendered or to be rendered in connection with influencing the award of any contract for equipment or otherwise for the New York Municipal Railway, or any of the rapid transit lines in the city of New York? A. I have not.

Q. Have you at any time instructed any person personally or by means of any other individual in your behalf or in behalf of your

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company, to offer payment to any public official or to any individual in the employ of any of the rapid transit railways in Greater New York for their influence or help in acquiring contracts for equipment of the New York Municipal Railway, or any of the proposed rapid transit lines in the city of New York? A. I have not.

Q. And have you at any time in your negotiations or other time been solicited by any public official or by any individual in the employ of any of the rapid transit lines in Greater New York or any other individual, for the payment of any sum of money or other valuable consideration in return for influence or help in acquiring contracts for the equipment of the New York Municipal Railway, or the proposed rapid transit lines of the city of New York, or has any suggestion been made to you to such effect by any individual, official or otherwise? A. I have not.

Examination by Chairman Thompson:

Q. Were you in New York during the negotiations? A. Which negotiations?

Q. Negotiations between your company and the New York Municipal Railways Company for the contract for signals in the Fourth Avenue? A. I think I was.

Q. How many times were you? A. I can't tell you. I was in New York from August 24th to August 26th, 1914. At that time I was negotiating with Mr. Thoolan and met him at the McAlpin.

Chairman Thompson.— I said during the negotiations with your company for the Fourth Avenue contract — that did not begin until after the 7th of September.

Mr. Dodge.— I don't know when I was there other than that,— other than on that date mentioned.

Chairman Thompson.— That is all.

Mr. Wilcox.— Mr. Edwards who negotiated the Ford patent, I think, in about three minutes if you could hear him could tie that thing in.

Chairman Thompson.— All right, I will give him five minutes.

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CLIFTON V. EDWARDS, sworn as a witness and after signing waiver of immunity, testified as follows:

Examination by Mr. Lewis:

Q. Now, Mr. Edwards, if you will proceed and make your statement. A. I have been and am now the general patent counsel for the General Railway Signal Company, and have been for some years past. Some time in 1913 or perhaps earlier than that the question of the development of the speed control was active among the engineers of the General Railway Signal Company, and the patent department was busy in seeking patent protection as far as it could. Our engineers had filed some applications and among other applications that looked promising were the Simmen application with which we were later to be into interference with the patent office. Mr. Dodge and I discussed getting control of those patents, as he has testified and conducted negotiations which I was informed of as they proceeded and approved of at that time. Later in 1914, in the early part of the year, after we had learned of the Simmen patent we had numerous discussions with Mr. Dodge and Mr. Saeger and myself about the Ford patent, I had told Mr. Salmon at that time I thought we ought to have the Ford patent if we went into speed control.

Chairman Thompson.— When was this?

Mr. Edwards.— The early part of 1914 — as early as March. At that time Mr. Salmon did not pay very much attention to it because it was a suggestion was pending more money on patent. But later after the option with Simmen had been signed I again spoke to Mr. Salmon about the two Ford patents and told him I thought if we went into the speed control, we ought to have a Ford patent. At that time I talked to Mr. Dodge and Mr. Dodge and I hesitated about approaching Ford because we did not know Ford's address to begin with and we could not figure out any way of getting into communication with him, without, as I thought, raising his price. Later after Mr. Salmon got in touch with Mr. Baldwin and spoke to me about it and said that he had found out that Mr. Baldwin controlled the Ford patent.

Q. When was that? A. That was in the early part of December. I cannot give you the exact date, but sometime I should say

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about the middle of December. Mr. Salmon met Mr. Baldwin, I think with me first and told Mr. Baldwin I was his patent counsel and any deal that I might make with Mr. Baldwin would be satisfactory to Mr. Salmon within limit, and then Mr. Baldwin and I had numerous conferences between then and the 29th of December as to the price on which we could get a license. We talked various plans. Mr. Baldwin wanted first to sell outright and wanted a great big sum. I said no, we were not prepared to pay a large sum but if he could figure out a plan by which we could pay what I thought was a reasonable sum down or cash payment on royalties, extend the royalties over a reasonable time, I was willing to give him out of the royalties a reasonable sum for the purchase of the patents. We agreed on the amount Mr. Baldwin put in his testimony the other day. The negotiations after Mr. Salmon left them were, I think, entirely between Mr. Baldwin and myself, and I was responsible for the approving of the terms of the agreement that were finally settled on with Baldwin. As appears already from the correspondence and checks which were brought in here, those identify the dates on which I wrote to the company and asked Mr. Salmon to send me the money to make the trade. I would like to say, in view of statements that appeared in the newspapers indicating that was some part of a slush fund, that at no time during my negotiations with Mr. Baldwin was the subject of either influence on a Public Service Commissioner or anyone else even discussed between us, and to the best of my knowledge and belief there was not a cent of that money that had anything to do with the Brooklyn Rapid Transit contract or any other contract or influencing the award of the contract.

Examination by Chairman Thompson:

Q. Who is Mr. Hewitt? A. Mr. Hewitt is an inventor who lives somewhere in New Jersey. He had filed an application relating to what we call the absolute permissive block signal system.

Q. Do you know where he lives? A. I could find out. His attorney, however, is Mr. Nicholas Goodlett, of 38 Park Row, of the firm of Redding, Greeley & Goodlett. That application was bought because we had brought a suit against the Western Maryland Railroad Company for the installation put in by the Union Signal Company, an absolute permissive block system, and we

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found it was along anterior to any of the other systems, and therefore I wanted to get possession of that.

Q. It came up in reference to the Western Maryland? A. Yes, sir. It had no reference to the Brooklyn Rapid Transit.

Q. You knew that Mr. Baldwin knew that you were willing to pay at least ten thousand dollars for that patent in your talk with him, as fully as the time you wrote the company for that money? A. I don't think he did. We were talking about — back and forth as to the amount of the preliminary payment. I had hoped to get it for less than ten thousand dollars. I had hoped to show that payment for a little less than ten thousand dollars. But I think it was likely at that date he had felt me out enough to know he was likely to make some sort of a deal.

Q. You talked openly with him? A. Yes, sir.

Q. You had conferences every day? A. Not every day. I don't know how many conferences we had.

Q. Where were they? A. Once in my office, once or twice over to the Lawyers' Club, and I think once or twice on the street. I could not place them exactly. I don't know just how many, but I should say —

Mr. Wilcox.— Is that all you care to say?

Chairman Thompson.— You have heard those questions propounded to the other witnesses?

Mr. Edwards.— Yes, sir. They are all through, and I would like to add that at no time during my negotiations with Mr. Baldwin was there the slightest —

Chairman Thompson.— We will assume all those questions are propounded to you, you answered them the same as Mr. Salmon and Mr. Dodge? A. Yes, sir.

Mr. Edwards.— Yes, sir.

Chairman Thompson.— Then, gentlemen, I will excuse you as witnesses, and you may go. We will suspend until to-morrow morning at 11 A. M.

Whereupon, the Committee adjourned to meet at the same place on January 4, 1916, at 11 A. M.

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JANUARY 4, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Quorum present.

Chairman Thompson.— The counsel to the Committee, Senator Lewis, has prepared a statement which the Committee adopts and which will be incorporated in the record.

The statement referred to is as follows:

> If public opinion has not lost its power, if extortion by public service corporations is to be prevented, if adequate and satisfactory regulation and supervision of such corporations is to be furnished in accordance with the purpose and intent of the law, and if the faithful and conscientious work of this Committee is not to be in vain, then the law must be amended, and amended radically.
>
> In my opinion the Public Service Commissions Law has broken down completely. It seems to me that the results of the investigation conducted by the Joint Committee of the Senate and Assembly demonstrates the fact.
>
> One of the controlling reasons, and one of the most convincing arguments for the creation of the Public Service Commissions as they now exist, was that there should be in existence a tribunal, or two tribunals, to which complaints of excessive rates, or inadequate service facilities might be made, which tribunals should be vested with full authority and equipped with all the machinery necessary to enable the rendering of prompt decisions and the correction of abuses.
>
> The consumers of gas in Westchester county know how completely the law has been a failure. They know that for a period of seven years they were compelled to pay an excessive rate for gas. They know also that during all of that period a complaint against the excessive rates was pending before the Commission of the Second District, undetermined.

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They know this because after seven years' delay, their complaint was sustained. They know also that the law not only does not prevent such delays, but that it does not provide any method by which they may recover the moneys paid by them for gas consumed during that period, which moneys, by the final determination of the Commission, should not have been paid, and which would not have been paid had the law itself been framed with due regard to the rights of such consumers.

In New York city, consumers of gas and electricity have had substantially the same experience. In 1910, a complaint of excessive charges for gas was filed with the Commission against the Kings County Electric Illuminating Company, which is still undecided. In 1911, a similar complaint was filed against the Brooklyn Edison Company, which also remains undetermined.

The law requires amendment in order that such abuses may not prevail in the future. This Committee has uncovered these and other abuses. It will prepare and submit amendments for the consideration of the Legislature. Whether or not such amendments shall be incorporated into the law will depend upon the people themselves.

Chairman Thompson.— We will hear Mr. Whitney, at 2:30 o'clock this afternoon, on the subject of sub-metering.

We will now take a recess until 2:30 o'clock P. M.

Whereupon, at 1:20 o'clock P. M., a recess was taken to 2:30 o'clock P. M.

AFTERNOON SESSION

The Committee was called to order at 2:30 o'clock P. M., pursuant to recess, Chairman Thompson presiding.

Chairman Thompson.— The Committee will come to order. What have you to report about a subpoena issued to Mr. Robert C. Wood?

Mr. Smith.— The subpoena was directed to Mr. Robert C. Wood, returnable forthwith, and he was not at the office of the Commission, and the process-server was sent to the office of his brother, P. Erskine Wood. He returns reporting P. Erskine

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Wood has departed for the day, and that Robert C. Wood has not been at the office during the day, and nobody there knows where he is or when he will be apt to be at the office.

Chairman Thompson.— Did you endeavor to find him at his residence?

Mr. Smith.— No, the process-server has not been at his residence.

Chairman Thompson.— Instruct the officers to make an exhaustive search in an effort to serve the subpoena at once.

Mr. Lewis.— Mr. Chairman, under instructions from the Committee, the counsel for the Committee has prepared and submits herewith charges of misconduct in office and neglect of duty against Robert C. Wood.

Chairman Thompson.— Before that is acted upon, I think there is some testimony should be put upon the record from Mr. Morse.

PERLEY MORSE, being recalled for further examination, testified as follows:

Examination by Mr. Lewis:

Q. Have you been engaged in the examination of the accounts of Robert C. Wood, P. Erskine Wood and Alice R. Wood? A. Yes, sir.

Q. What have you found in connection with securities owned or apparently owned by Robert C. Wood, if anything? A. There is a question as to two thousand Yonkers Railway first 5 per cent bonds, and one thousand New York and Queens Electric Light and Power Company bonds. We found, in the office of Colgate, Parker & Company, several accounts which had to do with the arrangement or transactions of Robert C. Wood. In any event, the loose-leaf ledger, loose leaves of these accounts, were handed to us by the employees of Colgate, Parker & Co., as pertaining to this matter. One account was called P. Erskine Wood, Regular Account. Another account was R. R. Colgate, Agent, and another one P. Erskine Wood, Special, and P. Erskine Wood, Loan Account.

Q. From your examination, does it appear to you that the

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ownership of the Yonkers Railway and the New York and Queens Electric Light and Power bonds, that they are owned by Robert C. Wood? A. There is nothing on the books that shows direct ownership of these stocks. However, we have been told that these bonds were there as collateral, and the only assumption we could make is that it has to do with a loan of thirty-five hundred dollars which Colgate, Parker & Company made to P. Erskine Wood. In the liquidation of that loan, we find checks which we have been able to trace, from R. C. Wood's bank account into P. Erskine Wood's loan account.

Q. What does that indicate to your mind? A. It indicates that a loan was apparently made by Colgate, Parker & Company to P. Erskine Wood, of thirty-five hundred dollars, which has been paid off gradually, and these bonds might have been placed there by some one as collateral for that loan.

Chairman Thompson.— Paid off gradually by whom?

Mr. Morse.— Paid off gradually by R. C. Wood.

Q. In other words, these bonds are held as collateral security for the loan made by Parker, Colgate & Company, which loan has been extinguished or partially extinguished from the payments from the bank account of R. C. Wood; is that the fact? A. Yes, and at this time it has been all paid through these payments and switches back and forth from one account to another. For instance, in this loan account of thirty-five hundred dollars is credited six shares of United Cigar Stores common, sold and credited to this account.

Q. Proceeds credited? A. Yes, and, in the P. E. Wood Special Account, there is a transaction that we don't understand. There is a check drawn to Robert C. Wood for $2,532.10, which was credited to P. E. Wood Special Account, and at the same time charged to this account, and the check was actually drawn and deposited in the bank.

Q. The check of P. Erskine Wood was drawn against— A. This is a check of Colgate, Parker & Company, drawn to R. C. Wood, $2,532.10, which is credited to P. E. Wood's Special Account No. 2. At the same time the check is charged to that account.

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Q. What does that indicate? A. Well, I have not been able to make up my mind as to what that would indicate. It is very unusual as a transaction in a brokerage house to both charge and credit a check in the same account.

Chairman Thompson.— Are these securities all in that same account?

Mr. Morse.— Yes, sir, these securities are in this account.

Chairman Thompson.— That is, P. Erskine Wood's special account?

Mr. Morse.— Yes, sir, No. 2.

Chairman Thompson.— And all the securities you mention are in there?

Mr. Morse.— Yes, sir.

Chairman Thompson.— Are there any others you have not mentioned?

Mr. Morse.— Yes, sir; fifty-five shares of Interborough Metropolitan Common, and there are seventy shares of Interborough Metropolitan Preferred.

Q. In whose name does that appear? A. This is all in the account of P. Erskine Wood Special No. 2.

Q. As security in any way? A. In the first instance, these securities were received in the account, and they were sold and credited to the account.

Q. In payment of the loan of Robert C. Wood, or in payment of a loan which has been extinguished by the checks of Robert C. Wood? A. Through the checks I have mentioned, debit and credit.

Chairman Thompson.— This procedure is taken in this way, because we have had no informal session.

Mr. Lewis.— I started to say, acting under instruction of the Committee, the counsel of the Committee has prepared and submits herewith charges of misconduct in office and neglect of duty of Robert Colgate Wood. I call the attention of the Committee to the fact that as these charges were prepared before any suggestion had reached this Committee that Mr. Wood had resigned, they

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carry upon their face a recommendation that Mr. Wood be removed from office. It has occurred to me that as the charges themselves, if true, convey to the Governor information of the commission of a crime by Commissioner Wood, particularly in that he failed to comply with the requirement of the Stock Transfer Tax Law, by failing to affix proper stamps to the certificates of corporate stock transferred by him, as shown by the evidence, it would not be improper, it seems to me, for the Committee to call those charges specifically to the attention of the Governor, in order that the Governor may, if he shall choose to do so, give such recommendations to the proper district attorney as may be necessary to insure the proper prosecution of criminal charges for the violation of the statute referred to.

Chairman Thompson.— I think the question first is on the charges themselves, and as I understand, you recommend these charges to the Committee, after having gone through the testimony upon them?

Mr. Lewis.— Yes.

Chairman Thompson.— I understand I am authorized to state by Senator Foley that he acquiesces in the first two charges, and he does not care to object to or affirm the rest of them. If there is no objection on the part of the Committee, these charges, as presented by counsel, will be presented as the charge of the Committee. Hearing no objection, they will be extended in the record, and a copy given to a special messenger to take to the Governor this afternoon.

The charges referred to are as follows:

To the Governor:

The Joint Committee of the Senate and Assembly, appointed to investigate the Public Service Commissions of the State of New York, and the administration of the Public Service Commissions Law, charges ROBERT COLGATE WOOD, a Public Service Commissioner of the State of New York, First District, with

MISCONDUCT IN OFFICE

First.— In that on or about a day in the month of June or early in the month of July, in the year 1914, the said Robert

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Colgate Wood, being then a Public Service Commissioner of the State of New York, First District, did knowingly and willfully and unlawfully solicit from one Sidney G. Johnson, a vice-president in charge of sales, then in the employ of the Union Switch and Signal Company of Swissvale, Pennsylvania, the payment to him, the said Robert Colgate Wood, of the sum of five thousand dollars as a consideration for services to be rendered by him, the said Robert Colgate Wood, in influencing the action and determination by the Public Service Commission of the New York Municipal Railway Corporation, of a certain contract then pending before the said Public Service Commission of the State of New York, First District, the approval of which said contract by said Public Service Commission being necessary under the laws of the State of New York, and under the provisions of a certain contract entered into by said New York Municipal Railway Corporation and the city of New York, dated March 19, 1913, before said contract could become effective as a contract, all in violation of the statutes of the State of New York in such case made and provided.

Second.— In that on or about a day in the month of September or the month of October, in the year 1914, the said Robert Colgate Wood, being then a Public Service Commissioner of the State of New York, First District, did knowingly and willfully and unlawfully solicit from one John T. Cade, an officer in charge of sales of the Federal Signal Company of Albany, New York, of an offer and tender of payment to the said Robert Colgate Wood, of a money consideration for services to be rendered by him, the said Robert Colgate Wood, in influencing the action and determination by the Public Service Commission of the State of New York, First District, of the award by the New York Municipal Railway Corporation of a certain contract then pending before said Public Service Commission of the State of New York, First District, the approval of which said contract by said Public Service Commission being necessary under the laws of the State of New York, and under the provisions of a certain contract entered into by said New York Municipal Railway Corporation and the city of New York, dated March

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19, 1913, before said contract could become effective as a contract, all in violation of the statutes of the State of New York in such case made and provided.

Third.— That the said Robert Colgate Wood, subsequent to his appointment as a Public Service Commissioner, committed a misdemeanor, in that he failed and neglected to affix the necessary transfer tax stamps to and cancel the same on a transfer of shares of stock in the American Sanitary Supply Company to one John A. Maher, such failure and neglect being in violation of the statute in such case made and provided.

Fourth.— In that the said Robert Colgate Wood committed the crime of perjury, in that while a witness under oath before the Joint Committee of the Senate and Assembly appointed to investigate the Public Service Commissioners of the State of New York and the administration of the Public Service Commissions Law, deliberately and willfully and knowingly testified falsely as to important and material facts in relation to his appointment to the office of Public Service Commissioner, in relation to the performance of his public duty as such Commissioner, and in relation to his qualifications for such office.

Fifth.— In that the said Robert Colgate Wood, while a Public Service Commissioner, was guilty of contempt of the Joint Committee of the Senate and Assembly appointed to investigate the Public Service Commissions of the State of New York and the administration of the Public Service Commissions Law, in that while a witness under oath, he deliberately and willfully and without just cause or reason refused to answer pertinent and material questions in relation to the administration of such law, and refused to inform such Committee of important and material facts in connection with such administration, and with the Commission administering the same, all of which inquiries and facts were properly within the jurisdiction of such Committee.

Sixth.— In that the said Robert Colgate Wood, while a Public Service Commissioner, First District, State of New York, was the owner and holder of stocks and bonds in public utility corporations subject to the jurisdiction, supervision and regulation of the Public Service Commission, of which

he was a member, in violation of the statute in such case made and provided.

AND

The said the Joint Committee of the Senate and Assembly appointed to investigate the Public Service Commissions of the State of New York and the administration of the Public Service Commissions Law, charges ROBERT COLGATE WOOD, a Public Service Commissioner of the State of New York, First District, with

NEGLECT OF DUTY

First.— In that the said Robert Colgate Wood, on the 30th day of July, in the year 1914, attended at a meeting of the Public Service Commission of the State of New York, First District, held at the office of the Commission, and knowingly and willfully voted for and participated in the determination of an application then pending before said Commission, made on behalf of the Edison Electric Illuminating Company of Brooklyn for leave to purchase 122 shares of the capital stock of the Amsterdam Electric Light, Heat and Power Company, and by such vote, participation and failure properly to perform the duties of his office as such Commissioner therein, voted for, permitted and allowed the adoption of a resolution granting to said Edison Electric Illuminating Company of Brooklyn permission and authority to acquire said stock, in violation of the rights of the city of New York and against its protest, and thereby permitted and allowed in pursuance of such resolution an order of said Commission granting the permission and authority aforesaid to be thereafter entered, under which said order the Edison Electric Illuminating Company of Brooklyn has acquired and become the owner of said shares of stock, to the irreparable injury of the said city of New York and of its inhabitants.

Second.— In that the said Robert Colgate Wood willfully and knowingly and in violation of statute in such case made and provided, permitted public utility corporations subject to the provisions of the Public Service Commission of which he was at the time a member to violate and neglect to obey the specific orders of the said Commission issued after hearings had, and therein voted against and exercised his power

and influence as such Commissioner to procure the defeat of a resolution introduced at a meeting of such Commission to compel enforcement of an order of the Commission issued on the 21st day of May, 1915, in proceedings entitled "In the matter of the hearing on motion of the Commission to determine whether an order should be made requiring the Third Avenue Railway Company and the Forty-second Street, Manhattanville & St. Nicholas Avenue Railroad Company to relay, repair or alter the rails on any lines operating in the city of New York," which action by the said Robert Colgate Wood was to the material advantage of such above named companies and to the material inconvenience and disadvantage of the city of New York and the patrons of the roads of such above named companies, in that by such action existing service was permitted to be and continue in an unsafe and inadequate condition.

Third.— In that the said Robert Colgate Wood, as a member of such Commission has knowingly and willfully and in violation of his duties omitted to protect and safeguard the interests of the city of New York and of its inhabitants, and in the exercise of his powers and duties as such Commissioner has failed properly and adequately to supervise the corporations subject to the jurisdiction of such Commission, and has failed to enforce the orders of such Commission and to properly and effectively administer the provisions of the Public Service Commissions Law.

WHEREFORE, The said Committee urges that proper notice be given said Robert Colgate Wood to be heard upon the charges herewith submitted and recommends that he be removed from office.

All of which is respectfully submitted.

The Joint Committee of the Senate and Assembly, appointed to investigate the Public Service Commissions of the State of New York, and the administration of the Public Service Commissions Law.

Chairman.

Dated, ..., 1916.

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Chairman Thompson.— In relation to the question brought to the attention of the Committee by counsel, regarding the fact that serious criminal offenses appear in these charges, what is the pleasure of the Committee in that regard?

Senator Lawson.— I make a recommendation that these charges be submitted by this Committee to the District Attorney of New York County, particularly in reference to Charge No. 3, jointly to the Governor and the District Attorney.

Mr. Lewis.— I do not know that it is necessary to change the form of the charges or the form of the recommendation, but it may be the Chairman might call, in a letter of transmission to the Governor, the Governor's attention to the fact that criminal charges are embraced under the charges, and I think that will be all that will be necessary.

Chairman Thompson.— If there is no objection, I will ask the counsel to prepare a letter for transmission to the Governor, and I will sign that also, and a copy to be sent to the District Attorney of New York County also.

TRAVIS H. WHITNEY, being recalled for further examination, testified as follows:

Mr. Whitney.— In order to clear up a possible ambiguity in respect of a matter particularly of master meters in connection with an order of the Commission and schedule of the New York Edison Company, the Commission, in March, 1915, made an order directing a reduction of the maximum price for electricity of the New York Edison Company, from ten cents to eight cents, and directed the company to file tariff schedule containing such a reduction. The company did file a schedule in April, 1915, effective May 1st, which in addition to containing a reduction in the maximum price of electricity, contained various regulations in respect of the use of electricity, among others, provision with respect to master meters, and a provision in respect to the tenants' inclusion clause. A number of people who had been following very diligently the New York Edison case and the schedule, protested against those two clauses, and there was a great deal of uncertainty as to how the company would carry out

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the provision in respect to master meters. There was brought to my attention — in the first place, I was informed that a company had been formed as a subsidiary of the New York Edison Company by employees of the New York Edison, to take over in some way this matter of furnishing meters to tenants, and a conference that was held in my room in respect of two or three matters contained in this schedule was attended by representatives of the New York Edison and the United Electric Light and Power Company, which was also affected by the order, and I asked those gentlemen whether they knew anything about the Electric Meter Company, and each of them stated that they had never heard of such a company. I afterwards ascertained the name of the company was the Electric Meter Corporation. I had been mistaken in the name.

By Mr. Lewis:

Q. They quibbled, did they? A. They certainly did. Shortly after that, there came to my attention a circular letter issued by the Electric Meter Corporation to the Consumers of the New York Edison Company, and because of the contents of that circular, I sent to the Electric Meter Corporation, and asked that representatives call at the office of the Commission, and Mr. Forgee, the president of that company, and Mr. Reginald Pelham Bolton, consulting engineer of that company, called at my office, and I asked them particularly with reference to certain clauses in their letter, which indicated a knowledge on their part of the policy of the New York Edison Company with respect to the substitution of tenants' meters, that was not known either to the Commission or apparently to other people interested in the matter. At the same time I asked them about the question of jurisdiction of the Commission over meters furnished by landlords for tenants' use, and I pointed out to them in all probability those meters would not be under the jurisdiction of the Commission, and in that conversation I indicated to Mr. Bolton and Mr. Forgee that the Commission was going to take up for investigation the question of these two regulations in particular, and the Commission did start a proceeding, with particular reference to the regulations contained in the tariff schedule of the New York Edison Company, and hearings were held on that case, and I want particularly to call attention to the

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testimony of the hearing of May 24, 1915, in case No. 1958, which I wish to leave.

(The testimony in the case referred to is marked Exhibit A of this date.)

Mr. Whitney (continuing).— That contains the examination by Commissioner Hayward of Mr. Forgee and Mr. Bolton in respect of the way in which they secured information from the New York Edison Company, that they used as the basis of circular letters to consumers of the New York Edison Company, a list of which they admitted they had obtained from the New York Edison Company at a time when no one else was able to obtain such a list. The Commission finally, in October, adopted an order in that case by a vote of three to two, which, in effect, confirmed the tariff schedule of the New York Edison Company. Commissioner Hayward filed a dissenting opinion in that case, a portion of which I desire to read, and which is as follows:

> "One case was brought to the particular attention of the Commission. It was that of the Electric Meter Inspection Company. While the proof was not conclusive, it appeared to me that a prima facie case was made out that the New York Edison Company or some of its officers, had taken the Electric Meter Inspection Company under its or his wing. All of the employees of the Meter Company are former employees of the New York Edison Company, and one of them is a brother of one of the officers of the New York Edison Company. The explanation of Mr. Forgee, president of the Meter Company, as to the manner in which he obtained the names of Edison customers and his protestations that he had received no list from them, were, to say the least, not convincing, in the face of a letter from the Meter Company to the Edison Company asking for information as to the location of the owner or agent of certain buildings. It also appears that on April 1, 1915, two weeks before the filing of the schedules containing the sub-metering section and two weeks before Mr. Forgee first heard, according to his testimony, of the master meter plan, the Edison Company in the Edison Weekly stated, 'It is understood that Mr. R. B. Bolton (the

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principal stockholder in the Meter Corporation) is now planning to organize a meter company for the purpose of renting and maintaining meters on the premises of the company's customers on the basis of a fair monthly charge. Through this company it is thought the relationship of the most satisfactory nature generally, both to the customer and to the company, can be established.' These may be, and perhaps are, mere coincidences. Considering, however, that the principal testimony to rebut them was of Mr. Forgee, whose admissions as to the misstatements he had made to the public, prejudice me against him, I am unable to give the Edison Company a clean bill of health on this score. It seems more likely, though, that the Inspection Company has at least been guilty of overreaching, and has taken undue advantage of the relationship existing between the personnel of its official force and that of the Edison Company. At any rate, I believe that the order in this case should contain a provision that the New York Edison Company and the United Electric Company file in its schedule a statement showing the prices at which their meters now installed will be sold and including the terms of purchase, conditions of sale and all other matters connected therewith so that all parties will be on an equal basis. I also believe it is proper to order that no information, data, prices, terms or assistance be given to one meter corporation which is not given to all."

I read that particularly, and refer to this matter, in order to make clear that I endeavored in the conferences I had with Mr. Bolton and Mr. Forgee, to bring out the source or the reason why they secured special information from the Edison Company that was not accessible to other meter companies, or even to the Commission itself. Instead of me giving to him any advance information in respect to what the acts of the Commission might be, so far as any intimation of the acts of the Commission might be, all I said and what I said was to Mr. Bolton the Commission was going to take it up for investigation, the two clauses under which his company was proposing to operate, and so far as any knowledge of sub-metering was concerned, that was not contained in

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any order issued by the Commission, but was in the tariff of the Edison Company, which was filed in April. As I understand, he testified the conference with me was in May, and there was a month's published notice of what the intentions of the company were in respect to sub-metering. I think that is all. Have you any questions, Senator Lewis?

Mr. Lewis.— No, I think not.

Chairman Thompson.— I wish you would look over a letter which has been received by the Committee.

(Chairman Thompson hands letter referred to, to Mr. Whitney, which is a communication from M. Bloch & Co., addressed to the Committee, and dated January 4, 1916.)

Chairman Thompson.— We will take that matter of the meter situation up next Friday, and we will take an elastic recess now that will not last longer than five o'clock.

(Following the announcement of the taking of a recess, Mr. Frank Erichsen Brown appeared and addressed the Committee as follows):

Mr. Brown.— Is Mr. Simmen to be heard?

Chairman Thompson.— I will hear you privately.

AFTER RECESS

Chairman Thompson.— We will now take an adjournment until Friday morning, at 11 o'clock.

Whereupon, at 5 o'clock P. M., an adjournment was taken to 11 o'clock A. M., January 7, 1916, at the same place.

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JANUARY 7, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order at 11 A. M., pursuant to adjournment.

A quorum present.

Senator Thompson in the Chair.

Chairman Thompson.— The Committee will come to order.

ARTHUR J. BALDWIN, recalled as a witness.

Examination by Mr. Lewis:

Q. Mr. Baldwin, you were served with a subpoena *duces tecum* to produce certain records and documents. Have you produced them? A. I was directed, yes, sir. I will produce them. I have already produced all contracts in any manner relating to the matter, and cancelled checks as requested. The only other item —

Q. When did you produce the cancelled checks? A. Relating to this transaction?

Q. Yes. Any other? A. None other than the check given to Mr. Ford, which is the only check in any manner relating to this transaction.

Q. But were you subpoenaed to produce all checks drawn by you against your account during a certain period? A. Yes, sir.

Q. Have you produced those? A. I have not.

Q. You only produced that one check? A. Yes, sir.

Q. Will you produce the balance of the checks? A. I decline to produce the balance of the checks.

Mr. Lewis.— I ask the Chairman to direct the witness to produce all checks covered by the period specified in the subpoena.

Chairman Thompson.— I so direct the witness to produce all the checks described or mentioned in the subpoena, from December 20, 1914, to January 20, 1915. The witness declines?

Mr. Baldwin.— I decline.

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Examination resumed by Mr. Lewis:

Q. What have you in the book which you produced, Mr. Baldwin? Anything relating to that subject? A. I have. You also directed me to bring any books and memorandums. The only memorandum relating to this is in my ledger, where, on the 31st day of December, 1914 —

Chairman Thompson.— Will you show the ledger to counsel?

Mr. Baldwin.— I entered —

Chairman Thompson.— Wait a minute. Will you show the ledger to the counsel of the Committee?

Mr. Baldwin.— I will not show my ledger to the counsel.

Chairman Thompson.— Will you show that page of your ledger showing this account?

Mr. Baldwin.— Yes.

Chairman Thompson.— To the counsel of the Committee?

Mr. Baldwin.— Yes.

Chairman Thompson.— Well, then, do so. Show it to him.

Mr. Baldwin.—(The witness shows the page of ledger to counsel, retaining it in his hands).— Where, under the date of December 31st, I entered under the head of miscellaneous income of my account for the year, the sum of $6,600, and also the sum of $2,500, which were items that had not heretofore been entered upon my books. This sum of $9,100 represented $5,000 so-called profit upon the Ford transaction, and certain other items that appear in my — that I had made during the year, that had not gone formally on my books.

Chairman Thompson.— Read that page of the book into the record, just as it appears on the page.

Mr. Baldwin.— You mean the entire page?

Chairman Thompson.— Yes.

Mr. Baldwin.— Well, I decline to do that.

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Chairman Thompson.— It is nothing except that account?

Mr. Baldwin.— Nothing except that account.

Chairman Thompson.— Well, I ask counsel to read that into the record.

Mr. Baldwin.— Well, I decline to have it done. The only transaction in any way relating to this is under date of December 31st, which I have already read into the record. I want to say that the production of my books —

Chairman Thompson.— Let me see the page of that record.

(Witness shows the page of the book to the Chairman, still retaining it in his hand.)

Mr. Baldwin.— It could not be taken care of in my income account, without transposing the ledger, that being the date I make up my income report.

Chairman Thompson.— This shows that on December 31st, you received cash $6,600?

Mr. Baldwin.— No. Miscellaneous income.

Chairman Thompson.— Well, this appears at 213 of your book, and it is headed, "Miscellaneous Income Account?"

Mr. Baldwin.— That is right.

Chairman Thompson.— And on the credit side appears this item: "December 31, cash $6,600?"

Mr. Baldwin.— That is right.

Chairman Thompson.— And "December 31st, cash $2,500?"

Mr. Baldwin.— Yes, sir.

Chairman Thompson.— And the rest of this are small items?

Mr. Baldwin.— Yes, in the following year.

Chairman Thompson.— In 1915, January 11, and the first item before that is on what date?

Mr. Baldwin.— June 24, 1914.

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Chairman Thompson.— And that was only $8?

Mr. Baldwin.— $8.55.

Chairman Thompson.— And those items that follow are all small items?

Mr. Baldwin.— Yes, sir.

Chairman Thompson.— And the only explanation is on the credit side of this account, and that simply says "cash"?

Mr. Baldwin.— Yes, sir, it was cash. I desire to say that I have now produced —

Chairman Thompson.— That simply shows that you received that cash?

Mr. Baldwin.— No; that is my income account — in my cash account.

Chairman Thompson.— That shows you received that income?

Mr. Baldwin.— It shows that on December 31st I passed on to my ledger credit, and my income account $9,100 miscellaneous income. And that was necessary at the end of the year, if we make a true account of our income to the Federal authorities.

Chairman Thompson.— But I say that is all that it shows?

Mr. Baldwin.— That is all. And it is the only record of any kind on my books relating to the so-called Ford transaction, except such as I have produced. I have produced now everything relating to this transaction. The showing of my books and my checks and transactions of necessity would reveal confidential relations with clients which I do not feel that I am authorized either morally or legally, voluntarily or involuntarily, and I therefore decline.

Chairman Thompson.— Well, that don't show, Mr. Baldwin, what you did with the money.

Mr. Baldwin.— Bless your soul, no.

Chairman Thompson.— And you decline to produce any records you have showing what you did with this money? Or which

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might give this Committee information on the subject? In other words, you decline to produce any of your other checks — and is this a ledger or journal or what?

Mr. Baldwin.— A ledger.

Mr. Chairman.— Where is the day book and journal.

Mr. Baldwin.— I keep no day book or journal.

Chairman Thompson.— You do not keep anything, only that?

Mr. Baldwin.— That is all. I want to say again, Mr. Thompson —

Chairman Thompson.— You have these checks and your check stubs that you decline to produce.

Mr. Baldwin.— I decline to produce them.

Chairman Thompson.— I say you have them.

Mr. Baldwin.— Yes, I have them.

Examination resumed by Mr. Lewis:

Q. I should like to ask the witness in the form of the demand contained in the subpoena. I now ask you, Mr. Baldwin, to produce your bank books showing certain transactions with the Essex County Trust Company of New Jersey, between December 20, 1914, and January 20, 1915. Have you produced those books, bank deposit books? A. I have not.

Q. Will you produce them? A. I will not.

Mr. Lewis.— I ask that the witness be directed to produce them.

Chairman Thompson.— I so direct the witness to produce the books and papers mentioned.

Q. I also ask the witness to produce the cancelled checks written by him and drawn upon the Essex County Trust Company of New Jersey for the period beginning December 20, 1914, and ending January 20, 1915. Do you produce those? A. I decline.

Mr. Lewis.— I ask that the witness be directed to produce them.

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Chairman Thompson.— The witness is directed to produce the papers and documents mentioned. Do you decline?

Mr. Baldwin.— I said I declined. Far be it from me to ignore the Chair.

Q. I also ask the witness to produce stubs of all checks drawn against — upon the Essex County Trust Company of New Jersey, between December 20, 1914, and January 20, 1915. A. That I decline.

Mr. Lewis.— I ask that witness be specifically directed.

Chairman Thompson.—I direct the witness to produce the documents and papers mentioned.

Mr. Baldwin.— At this point, I want to say that my declination only refers to the things relating to other transactions than this one. I have already produced the cancelled check called for relating to the Ford transaction, the only one.

Chairman Thompson.— But you have not produced the cancelled check for only half the money you have received. You are declining to produce checks and vouchers which the Committee have a right to know relating to the expenditure of the rest of the money. You simply decline to produce them?

Mr. Baldwin.— But I do not quite like your inferences from your argument.

Chairman Thompson.— I cannot help that. I did not expect you would like it. It is not an inference. You have only shown a check for $5,000, and you got ten thousand.

Mr. Baldwin.— I have shown you I passed it to my miscellaneous income for the year, the day following.

Chairman Thompson.— Your miscellaneous income grew from five thousand to $9,100.

Mr. Baldwin.— I had other sources of income than the $5,000. If you would like to see where that money was spent, it would involve going into my check account or expenses for 1915.

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Chairman Thompson.— As I understand, you decline?

Mr. Baldwin.— I do further than I have produced.

Q. Have you any vouchers other than the cancelled checks for the payment made by you during the period beginning December 20, 1914, and ending January 20, 1915? A. I really don't know. I would have to look through receipts.

Q. You were required by the subpoena to produce all vouchers showing transactions with the Essex County Trust Company of New Jersey covering that period? A. Yes, sir.

Q. Have you produced any such vouchers? A. I have not other than the one relating to the Ford transaction.

Mr. Lewis.— I ask that the witness be directed to produce all such vouchers called for by the subpoena.

Chairman Thompson.— You say you have not examined the receipts?

Mr. Baldwin.— He asked if I had any receipts other than cancelled vouchers. There might have been payments of bills — in my bills there might have been receipts for tailors' bills, or household bills —

Chairman Thompson.— Will you examine them?

Mr. Baldwin.— I will not.

Chairman Thompson.— I direct you to do that and produce those at once.

Mr. Baldwin.— I decline.

Chairman Thompson.— The witness is excused until next Thursday morning at 11 o'clock.

WILLIAM WILLIAMS, called as a witness, testified as follows, after first stating that he is Commissioner of Water Supply and Gas:

Chairman Thompson.— Now, Commissioner, the Committee is rather sitting in a way out of courtesy to you, because you re-

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quested an opportunity to come before the Committee. Your request, however, only came probably because of what might be a criticism or statement of the Chairman of the Committee. Now, the criticism or statement came because of information given to the Chairman of the Committee in an injunction proceeding which had been pending, and which was suddenly terminated a week or two ago. So we want the matter to be full and fair. I have not gone into the matter too deeply, and my information, some of it, came from a Mr. Momand. I understand he is here. And just before you make your statement I wish that our counsel be permitted to withdraw and talk with Mr. Momand, and we will take a little recess of five minutes, and let counsel talk it over with him, and see what it is about, and perhaps we will get along better and you will be permitted to go on and make your statement in full. If there is no objection on the part of Mr. Lewis to meet Mr. Momand or Mr. Momand to meet Mr. Lewis, we will take an elastic recess of five minutes.

Mr. Williams.— I am here as the Chairman suggests, in answer to his criticisms in which it was stated that he thought the whole subject of public lighting should be investigated and I would like at this point to insert in the record a copy of a short letter which I wrote and to show why I am here.

Chairman Thompson.— It is in the record — the first letter you wrote me. Of course the second letter was no particular literary effort.

Mr. Williams.— I meant the first letter. I am here to tell you anything I know on the subject of public street lighting or answer any complaints that may have been made against my administration.

(At this point a recess was taken.) During the recess Chairman Thompson made the following statement: I am going to take this opportunity while here—perhaps I ought not to do it while Mr. Lewis is out — but if there is any statement he objects to, he can correct it.

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Now the people of this State will realize that this Committee has been in session continuously since the first of September. We have not only been in session every day and made a day of it, but we have worked practically all the time. We have not been a very large investigating committee. It has been a modest membership and had a modest array of counsel and the consequence was when we got into these questions which turned out to be rather large in importance that we worked all the time, counsel, committee, members and Chairman and Assistant Counsel and everybody else, from the time we got up in the morning until we went to bed at night — most of them — and it has been an everyday proposition, seven days in the week. Senator Lewis is the First Deputy Attorney-General of the State, and a very responsible position in itself, and the Attorney-General's office of this State is the greatest law department, I understand, in the world. I understand its ramifications and necessities in relation to its organization make it the greatest law department in the whole world that is known, and Mr. Lewis therefore as First Deputy, why, his position there is emphasis of that statement, and it is needless to state as a conclusion, that his attendance here and his work on this Committee has been at a great sacrifice. Our Attorney-General of this State has also made an equal sacrifice in the loss of Mr. Lewis's services in Albany. And it was expected that we might have our investigation completed by January 1st and possibly move the Committee's investigation to Albany, where perhaps the other matters could be taken care of and might take such hours of the day as not to interfere with the other work. But the conditions are such we will have to hold other hearings in this city, and the Attorney-General is still willing to make whatever sacrifice is possible and give this Committee the services and ability of Mr. Lewis, which we desire and want. That will necessitate our holding our meetings in the future at the latter end of the weeks,— in other words we cannot hold them every day all the time, seven days in the week, as we have in the past. So that the future meetings of the Committee, in order to accommodate the public business, and then some of the rest of us have duties in the State Legislature and matters in regard to this subject under consideration by this Committee have got to be taken before the Legislature, so that the first

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three days in the week will he hereafter given up to that anyway. And that is the reason why when this Committee adjourns today it will adjourn to Thursday of next week. I make this statement in justice to Mr. Lewis and in justice to the Attorney-General of the State who has been extremely generous with us, and I want to emphasize, because I want it again generally understood, that this Committee gets the services of Mr. Lewis without any expense out of our appropriation — it is paid for by the appropriation of the Attorney-General in his regular salary and regular work.

(At this time Senator Lewis returns to the hearing.)

Chairman Thompson.— I have stated in your absence, Mr. Lewis, as to why we will hold our sessions at the latter end of weeks, especially those here, and it must be understood, too, that there are two Public Service Commissions in this State and I do not like to show too much partiality to the First District.

Senator Lewis.— Mr. Chairman, I have conferred with Mr. Momand on the subject of lighting contracts. I have had a brief conference with Mr. Momand, and from what he tells me, it seems to me that it is desirable that Mr. Momand be asked to take the stand first and tell his story to the Committee. With his story on the record, Mr. Williams may be placed upon the stand and in the light of the information obtained from the examination of Mr. Momand, Mr. Williams can be examined very much more intelligently and effectively than if Mr. Williams is asked questions now.

Chairman Thompson.— Well, of course, this is a very peculiar situation we are in this morning. It is not that the Chairman of the Committee does not feel that we want to be arbitrary about this. What is your idea about that, Mr. Williams?

Senator Lewis.— I think Mr. Momand is of the opinion that that course be followed.

Mr. Williams.— You asked my opinion. I have come here to tell you what I know about public street lighting and to answer any questions that may be in your mind. I took you right up on the very language that you used and with every courtesy I want

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to tell you everything I know about this and answer any complaints. I rather assume, in view of the language that you used, you would like to know something about the method we pursued here in letting these contracts, and as to how I had brought it about that the public lighting bills of the city today are at the annual rate of eight hundred thousand dollars less than they were when I took office.

Chairman Thompson.— Well, don't you think that perhaps you could answer after finding out what Mr. Momand thinks of you, you could answer that better?

Mr. Williams.— It is a matter of indifference how you proceed. If you want to know what he thinks of me—I happen to know it already — let him take the stand.

Chairman Thompson.—Well, if that course seems to be agreeable, why, proceed, counsel. There will not be any question about giving you a full opportunity to be heard in full. I am not in a position where I have made my mind up about this. I will try and see if I can get one of those judicial attitudes on.

RAGLAND MOMAND, sworn as a witness, testified as follows:

Examination by Mr. Lewis:

Q. Mr. Momand, where do you reside? A. At the Biltmore.

Q. At New York city? A. New York city.

Q. What is your business? A. I am consulting engineer for the Public Lighting Service Corporation.

Q. And what is the Public Lighting Service Corporation? A. That is a street lighting corporation.

Q. Incorporated in this State? A. In the State of New York.

Q. What is its capital stock? A. One hundred thousand dollars.

Q. When was it incorporated? A. In February, 1914.

Q. Who were the other incorporators? A. I was not an incorporator.

Q. You were not one of the incorporators? A. No.

Q. Who were the incorporators, if you know? A. I do not recall who the incorporators were, at the present.

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Q. What is your official connection with the company? A. I am the consulting engineer.

Q. Who are the officers of the company? A. Mr. Francis H. Rueh is the president. Mr. Francis T. Deitz, the secretary and treasurer of it. Mr. Christian Cornehlson is the vice-president.

Q. Where is the office of the company? A. 37 Murray street, New York city, Borough of Manhattan.

Q. Was there a time when you submitted bids for the public lighting of the city of New York or some portion of the city of New York? A. Yes, sir.

Q. Just tell us what there was of that, and when? A. On December 30, 1914, the corporation submitted a bid for the gas lamp contract for the borough of Manhattan for the year 1915, under specifications which had been issued by Mr. Williams of the Department of Water Supply, Gas and Electricity. The bid of the Public Lighting Service Corporation was 93 cents per lamp per month under that contract. The only other bidder was the Welsbach Street Lighting Company of America, who had held the contract for the last sixteen years — since these incandescent gas lamps were first introduced on the street for public lighting in this country. Its bid was one dollar per lamp per month, which was the sum it had received for several years prior.

Q. Now let me ask you right there whether your company is a producing company? A. What do you mean?

Q. Producing gas for public lighting? A. No.

Q. And is the Welsbach Company a producing company? A. No.

Q. From whom did your company contemplate to purchase the gas required for the carrying out of the contract in the event of your being the successful bidder? A. The city of New York furnish the gas at the top of the lamp post, including the lamp post. The lamp company only furnishes the lamps and attaches them to the post and lights and cleans and maintains those lamps.

Q. And it is for that service that your company bid rather than for the furnishing of gas itself, including the care, and so forth, of the lamps? A. Exactly.

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Q. Now, you may proceed. A. The day following the bids, on December 31st — I would like to make a short statement as to the nature of the street lighting business before proceeding.

Q. State whatever you have to say on the subject, Mr. Momand. A. The public lighting — that is, street lighting of streets, parks and public places, is done in this country in two ways, by electricity and gas. The electricity for that purpose is furnished, as a rule, — in fact, I might say wholly by the local electric lighting company, while the gas lighting, which is almost universal, has been for a number of years done by these gas mantle lamps, so-called Welsbach lamps. The method throughout the country is for the various cities to make contracts for lighting of these lamps, and those contracts are made with these lamp companies, of which there are about twelve or fourteen operating throughout the country, outside of the Public Service Lighting Corporation. Those companies, which include the Welsbach Lighting Company of America, operating here in New York city, and the New Jersey and New York Globe Gas Lighting Company, which operated here for about sixteen years, up to about the second bidding, March, 1915, when they dropped out — and the Pennsylvania Globe Gas Lighting Company, also operated here for about sixteen years, and also dropped out at the second bidding in March, 1915, are all owned by one concern and that is the United Gas Improvement Company of Philadelphia, commonly known and referred to as the street lighting trust in respect to street lighting. Now these two companies dropped out, that is, the New York and New Jersey Globe Gas Lighting Company, and the Pennsylvania Globe Gas Lighting Company, dropped out at the second bidding, in March, 1915, owing to an investigation which was on and is still on by the Department of Justice in Washington City, through the method of operating through these dummy companies, and on account of that investigation I was advised by the Department of Justice that these two companies were withdrawn, leaving the Welsbach alone, who at the third bidding, bid for the entire five boroughs, where before they had only bid to obtain the contract for the boroughs of Bronx and Richmond and Manhattan, and of the other two companies was Queens and Brooklyn. Now, some cities contract with these lamp companies for the lamps and gas

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supply and the maintenance. A great many cities furnish the gas supply, the same as New York does, so as to eliminate the necessity of lamp contract to deal with the local gas company. Now, that states the nature of the business and the way it is conducted. The city of New York furnishes the gas, as I say, at the top of the post. Now, I have here the file of the first bid on December 30, 1914, for the contracts of New York city for the year 1915. There is very little here that I will have to refer to, gentlemen. On January 5, 1915, this letter was received from Commissioner Williams, addressed to the Public Lighting Service Corporation, respecting its bid. This letter is dated December 31, 1914. "The Public Lighting Service Corporation, No. 47 Murray Street, City." At that time it had its office at 47 Murray Street.

> "Dear Sirs: Referring to your bid dated the 30th instant for the supply and maintenance of gas lamps for street lighting in the Borough of Manhattan, City of New York, I request that you designate a time and place at which representatives of this department can inspect your facilities for complying with the requirements of the contract under which you submitted a proposal. Respectfully,
>
> "William Williams, Commissioner."

"D.S.A." is signed underneath "Commissioner."

Now, on the following day, January 6, 1915, the Public Lighting Service Corporation wrote this letter to Commissioner Williams, in reply to his letter. Shall I read this?

Q. Read it into the record.

> "January 6, 1915. Mr. William Williams, Commissioner, Department of Water Supply, Gas and Electricity, Municipal Building, New York City. Dear Sir: Your letter dated December 31, 1914, requesting that we designate a time and place at which representatives of your department can inspect the facilities of this company for complying with the requirements of the contract for which we submitted a proposal on the 30th ultimo, was received in the mail on the 5th instant.

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"For your information, we will state that this company is a New York State corporation, with its principal office located in New York city, at the above address. In keeping with the universal practice, and like the present contractor, which is a foreign corporation, with its principal office and place of business located in the city of Philadelphia, this company has its lamp equipment largely made by various manufacturers. For example, its lamp heads and other cast iron parts are made by certain iron foundries or works under contract. Its glass globes and chimneys by certain glass factories. Its burners and other brass parts by certain brass factories, and its mantles by certain mantle factories, all experienced in manufacturing their respective parts, which is done under the supervision of the corporation's engineering department. This department is in charge of Mr. R. Momand, a man of broad practical experience and expert knowledge in incandescent gas street lighting matters, who has heretofore installed and maintained similar equipment and service for the city of New York in the borough of Brooklyn, to the satisfaction of your department. These parts are shipped direct from the respective factories making them, to the place where the lamps are to be erected, and they are assembled and installed by the corporation, the same as was done by the present contractor when it secured the contract for its gas street lamps now operated by it in the borough of Manhattan about sixteen years ago. Like the organization now being maintained by the present contractor, this corporation proposes to establish a local office centrally located with such branch or district offices and stock rooms as may be necessary in the borough of Manhattan for the proper execution of the contract. Under the bid of this corporation the city will secure an entirely new lamp equipment of an improved pattern, installed throughout the borough of Manhattan, which will be a great improvement in itself. The corporation has made arrangements with reliable and responsible concerns for all the necessary equipment of this contract, and would be glad to submit to the department for inspection sample lamp

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equipment which it is prepared to install on due notice, and maintain under its proposal. The writer would like to meet you in conference and discuss the matter of the contract more fully, and would appreciate any appointment. Respectfully yours, (Signed) Francis H. Rueh, President."

Now that was written on the 6th. We did not hear from Mr. Commissioner Williams in reply to that letter or from the Department in any way, up to January 14, 1915, when Mr. Rueh and I called at the Commissioner's office. We were met by Mr. Edward J. Lyons Raldaris, who stated that Commissioner Williams was very busy and requested him to say that the Public Lighting Service Corporation is the low bidder, was entitled to the contract, and it would probably be awarded to it next week, and that the Commissioner would make an appointment the next day or two for a conference to go over the matter of the contract. Now, we did not hear anything further from Commissioner Williams or from the office, and on January 21, 1915, I wrote the Commissioner this letter: The date of that letter is January 21, 1915:

"Mr. Commissioner Williams, of the Department of Water Supply, Gas and Electricity, Municipal Building, New York city. Dear Sir: We are still awaiting the appointment to arrange the details of gas lamp contract with you, which Mr. Raldiris stated on the 14th instant, would be made last Saturday or Monday. Can you not arrange so that the matter of details in connection with the contract can be settled without further delay? We do not wish to unduly hurry you in the matter, but the contract being only for one year, every day's delay in getting the work started means a loss both to the city and our company.

"Respectfully yours,
(Signed) "Francis H. Rueh,
President."

Examination by Mr. Lewis:

Q. Now, is it necessary, Mr. Momand, to read into the record all this correspondence. Cannot you summarize? A. Yes, I can.

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Q. I think that would be better than to get so much correspondence. Did you get the contract. A. Well, we finally got it after the fourth public bidding.

Q. Just go on and tell us the history and summarize it if you can? A. After that letter — in fact the following day — Mr. Atkins, the chief engineer of the department, called us up, Mr. Rueh up, and Mr. Rueh and I went over, and met Mr. Atkins and two or three other parties there — seemed to be —. We were asked about the organization of the company, its capitalization and its abilities financially and otherwise to carry out this contract. Mr. Rueh made a statement to the gentlemen as to the capitalization of the company and assured them that it had ample resources financially and otherwise to carry out the contract, and he offered to back up the contract either personally, and also have his firm do so if the city should require in addition to giving the bonds which the city required.

Q. How much of a bond was required? A. About thirty thousand dollars was required under that. I might add five or six times as much loss as the city could possibly have in regard to the matter. Mr. Rueh is a member of the house —

Q. What was the firm name? A. Fensterer and Rueh.

Q. Located where? A. 37 Murray street.

Q. His line is what? A. Importers of glassware and electric light fixtures.

Q. Go on now and give us as briefly as you can —. A. At that meeting or a meeting a few days after that we were asked to furnish the department, among other things, a list of the stockholders of the Public Service Lighting Corporation, with the number of shares held by each stockholder. We were also asked to furnish the department the names of the various manufacturers manufacturing the several parts of the lamp equipment, and also to furnish the department the form of contract which we had with these several different manufacturers. Now both of those demands Mr. Rueh refused to meet on the grounds that they were inside business secrets of the company and did not in any way concern the department, and it resulted in the corporation receiving a letter from Commissioner Williams, dated February 9, 1915, stating

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that he had rejected the bids that had been submitted on December 30th previous and had advertised for new bids to be opened on March 1, 1915. And when the specifications were issued, we received them a few days later, he had decreased the number from 10,500 to 9,000 in the borough of Manhattan. Well, about six weeks having passed by, shortening the contract term by that much, that time, the corporation put a bid in at the second bidding for one-half of the borough of Manhattan, in keeping with the specifications, as the department issued them.

The contract was not as desirable for ten and one-half months as it was for twelve months. Now, we did not hear anything at all from the — I would like to read into the record here, and that it was put in the specifications both of December 30, 1914, and the bidding of March 1, 1915, this is page 1, paragraph 2: "Bidders should specify in their bids the districts within which they will be prepared to do the work and perform the services called for." And page 5 of the bid, "The territory within which the above-named bidder will do the work and perform the services and deliver the supplies called for by this bid is as follows:" And then we write our territory in there. In our first bid we wrote in the Borough of Manhattan. In the second bid of March, we wrote in "The west half of the Borough of Manhattan, taking Fifth avenue as the dividing line," making approximately about 4,500 lamps. Without hearing from the department in any way or Commissioner Williams, we received a letter dated March 9th, nine days after the bids were opened, stating that he had rejected the bids and again advertised for new bids to be opened on March 23rd. I might add that we were the low bidder at that second bidding. We bid the same price as on the first bidding, and the Welsbach Street Lighting Company of America bid the same price as at the second bidding. When we received the specifications for that third bidding, we noticed Commissioner Williams had taken a pen and ink and ran through this second clause which I have just read, striking that clause out, giving the bidders the privilege of specifying the territory on which they wanted to bid, and on page 5 there, underneath the clause which I have just read into the record, he wrote in pen and ink, "For the whole of the

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borough of Manhattan," taking away the right of bidders to bid for part of the borough. I might add that those provisions have been in the contracts for the last sixteen years, in fact, fifty years, in the New York city specifications for public lighting. I say sixteen years on account of the fact of these particular lamps — but for fifty years. Now, there was a condition — the contract had then been reduced to practically nine months, and we were compelled to bid for the entire borough on a short contract which was a decided disadvantage to competing bidders, or, say, a new contractor. Of course, the old contractor having his lamp on the post, it did not make any difference. And I might add a corresponding disadvantage to the city of New York, because on our third bid, we had to raise our price, not much. It was 95 cents per lamp per month on the second bid. The Welsbach Street Lighting Company of America, the only other bidder, maintained their price of one dollar.

Q. Did you submit bids on the third application? A. We did. I am just saying that we raised our price.

Q. And this was the year for which you bid on the third advertisement? A. Yes — 95 cents.

Q. What happened to that? A. Commissioner Williams — that is, one of his subordinates, a Mr. Ackin, called us on the telephone and asked Mr. Rueh and I to come over to the office. Mr. Ackin tried to get us to accept a contract for three thousand lamps approximately. I will withdraw that statement. That was after the fourth bidding. After this third bidding, when Mr. Rueh and I called, the third bidding was opened on March 23rd. On March 30th, we received a letter from Commissioner Williams, putting in writing the demands he had made on the first bidding in January, for this information which we had refused to divulge at that time, about the inside affairs of the company and its manufacture and so forth. This is a very important letter, so I would like to read it into the record. My object in this is to show that after the fourth bidding, Commissioner Williams — he retired from these demands.

Q. Abandoned them? A. He abandoned these demands. This letter dated March 30, 1915:

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"Public Lighting Service Corporation, 47 Murray street, New York city. Dear Sirs: Replying to your letter of even date herewith, I advise you that I am willing to receive from you in writing such information as will enable me to determine the capacity of your organization to carry out a contract for furnishing and maintaining gas lamps in the borough of Manhattan for the balance of this year. I desire first that you furnish me with an exact and formal statement of assets and liabilities, in form similar to that which is used by mercantile agencies. You doubtless are familiar with this form. In addition to that information, I ask you to make specific replies to the following questions. First, how much of the capital stock of the corporation has been actually issued; second, how much has been issued for cash; third, how much has been issued for property; fourth, how much has been issued for services; fifth, what contracts, if any, have the corporation performed similar to the one which they now seek to perform to the city; sixth, what portions, if any, of the necessary equipment does the corporation itself manufacture; seventh, if it manufactures any portion, how much thereof is in stock; eighth, what items of the necessary equipment will the corporation have to procure through contract; ninth, with what concern or concerns does it propose to make the necessary contract or contracts for the manufacture of such items; tenth, how long will it require to install the whole of the equipment; eleventh, has the corporation filed, pursuant to law, a certificate to the effect that one-half of its capital stock has been paid in? Respectfully, William Williams, Commissioner." "G.A.A." is written underneath.

Q. Did you comply with that request? A. We replied to it of April 3rd. I have the letter here.

Q. Is it long? A. About a page and two-thirds.

Q. Read that into the record, if you like.

"Dated April 3, 1915, Mr. William Williams, Commissioner, Department of Water Supply, Gas and Electricity, New York City. Dear Sir: We beg to acknowledge receipt

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of your letter of March 30th, requesting a statement of the assets and liabilities of our corporation and we would take up the various questions which you have submitted. First, we are incorporated for $100,000 and have actually issued $55,000 of the corporation's stocks, full paid and non-assessable. Second, we have issued for cash, $25,000. Third, $30,000 of property to be used for city contract addition."

Chairman Thompson.— May I interrupt. I had the honor of being invited to lunch with the District-Attorney and I have got to go, and I will turn my gavel over to Assemblyman Burr.

"Fourth, we have $45,000 treasury stock. Fifth, this corporation has been doing business since February, 1914, supplying gas, street lighting equipments and gas companies and municipalities. It has not had any street lighting contracts but the members are thoroughly conversant with the requirements of said contracts and have an experience of over fifteen years in this line of business. Sixth, this question has been fully answered in our letter to you dated January 6, 1915, on the occasion of the first bidding for this work to which you are referred. Seventh, stock on hand valued at $10,000 which we can use in connection with this contract. Eighth, the balance of such items as may be necessary to complete the equipment. Ninth, leading and successful manufacturers' experience in this line of work. Tenth, we could begin work in thirty days and complete the installation in ninety days. Eleventh, it has. Refers to filing certificates.

"It may interest you to know that the president of our company, F. H. Rueh, is a property owner of the city of New York and is paying an annual realty tax to the city of New York of upwards of two thousand dollars. We think with this information you can feel assured that this corporation is in a position to properly execute the contract of furnishing and maintaining gas lamps in the borough of Manhattan for the balance of this year."

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Now I would like to state here that the information as to the company's organization and resources and all was given in January, to the department. There was practically nothing new in this statement made here. On April 6th, Commissioner Williams addressed a letter to the Board of Estimate and Apportionment, asking their permission to award the contract to the high bidder. The Board of Estimate referred the Commissioner's application to the Comptroller who asked the Bureau of Contracts Supervision of the Board of Estimate to investigate the matter. We were asked by the Bureau of Contracts Supervision to furnish it with all of the data which we had in connection with the matter, which we did.

Senator Thompson.— I wish you would put on the record that Mr. Simmen of Buffalo is excused as a witness until sent for.

A. The Bureau of Contract Supervision spent several weeks, three or four weeks, in investigating the matter, as I understood, very thoroughly. It framed a report which Mr. Tilden Adamson, the head of that bureau, directed in my presence be made, recommending that the contract be awarded to the Public Lighting and Service Corporation. I was told by Mr. Saunders of the Bureau of Contract Supervision, one of the gentlemen who had made this investigation, a few days later, possibly two or three days later, that Commissioner Williams upon learning that this report had been prepared by the bureau and that it recommended the award of the contract to the Public Lighting and Service Corporation, had expressed a desire to withdraw his letter from the Board of Estimate — his letter of April 6th — and that he was now willing to award the contract to the Public Lighting and Service Corporation. I was asked by Mr. Saunders if he had any objection to making a form of statement of assets and liabilities of the corporation, and having it certified before a notary. As Mr. Saunders told me at the time, he told me that the Commissioner wanted — to use Mr. Saunders' exact words, wanted to save his face. I told him we had no objection to making such a statement and we did make such a statement. Mr. Rueh, the president of the company, the following day or two made a very short statement of its assets and liabilities. Not such as the commercial agencies require.

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Q. It was sufficient for the purposes, was it? A. Yes, sir. But it contained nothing more than we had submitted in January to the department. There was nothing new in it at all. Nothing new in it to add to the strength of the company in any way.

Now, I was told that Commissioner Williams would award us the contract immediately upon receiving that letter, which he wrote the board on April 6th, on his getting possession of that letter. The Commissioner wrote a letter to the Board of Estimate under date of June 8th, which appears in the calendar of the Board of Estimate, under date of June 11th, requesting the return of this letter, stating that he was now willing to award the contract to the low bidder. The letter was returned the same day to the commissioner, I was told by the clerk of the Board of Estimate. Instead of awarding the contract to the Public Lighting Service Corporation, as I was told he had agreed to it, and his letter to the board stating he would do, he referred the entire matter to the Corporation Counsel's office, and in that he gave the Corporation Counsel — he made a misstatement of the facts of the situation entirely, and on the strength of this misstatement of facts, the Corporation Counsel's office advised the Commissioner to reject these bids and advertise for new bids, the fourth time, which the Commissioner did. That fourth bidding took place on July 13, 1915, for the remainder of the year. Then the contract had been reduced to less than six months — in fact, less than three months, considering it takes about ninety days to make the installation. You get about three months' actual service. At that fourth bidding, the Public Service Lighting Corporation filed a bid for the entire borough of Manhattan, at the rate of 93 cents a lamp per month. In other words, the corporation got back to its original low bid, as it felt then it did not want to be frozen out of this contract.

Q. Were there any other bidders? A. The only other bidder was the Welsbach Street Lighting Company of America, and they bid one dollar, the same as they had bid at the three previous biddings.

Q. To whom was the contract awarded? A. We were then called over to the office of the Commissioner, and were told by

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Mr. Ackin — that is, Mr. Ackin endeavored to get us to accept a contract for three thousand lamps, which we declined to do. We told him our bid was for the entire borough and we wanted the entire borough, and the contract was finally awarded to our company on that fourth bidding, on July 22nd. We received a letter — that is, a letter written by Commissioner Williams, notifying us that the contract had been awarded under that fourth bidding to our company, and it was August 5th before we were asked to come over to the Commissioner's office and sign a contract, which we did, and we were told we would get our copy of the contract the next day or two. Well, not having received the contract on August 18th, we wrote a letter over to the department, asking them to furnish us our copy of the contract. We were called on the 'phone about that time, and it was stated through some misunderstanding when our president and secretary had been over there on August the 5th and signed the contract, it had not been acknowledged, and consequently they wanted to have the notary come over to the office and take acknowledgment of the president and secretary of the company, which was done, and we got the contract the next day or two. Then we received a communication from the department stating that we would not be permitted to install lamps until they had been approved by the Art Commission, which meets once a month. They had just had a meeting shortly before that, and the next meeting was September 13th, nearly a month off. Well, in the meantime, they asked us for samples of our equipment. We had lamp equipment — we furnished two samples, and we were told that we would be permitted to have a party present at the test of these two lamps, to see that they come up to the candle power requirement of the contract. That is a matter in writing — we had a letter from Chief Engineer Atkins, notifying us in advance we could have a party present. We received no notice of any tests that would be made. On the other hand, we received a letter from Mr. Atkins some time after, stating that he had tests made, and enclosing what purported to be a test — a test of two-burner equipment. One of them he had rejected, he notified us, and the other was perfectly satisfactory. The one he rejected happened to be an equipment we had on hand, a considerable amount of, and was prepared at once to make

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installation, and I might add that that duplicate had been installed in the city of Brooklyn and given perfect satisfaction there the year before. And so, of course, we objected to this method of conducting these tests, in opposition to an expressed agreement we had made with the department. Well, the Art Commission accepted the equipment, approved of the features of the equipment, on September 16th, I think it was. Then, for the first time, we were in a position to go to work and make up this equipment and install it — that was September 16th, before we were at liberty. We had no contract, in fact, until that time. So, under that arrangement, we had to begin installation within sixty days, which was November 16th, for a contract expiring December 31st, and the cost of the equipment cost twenty or twenty-five thousand dollars. They had finally succeeded in cutting down the number of lamps to about three thousand. And the first list of location of lamps which we received from the department included about 400 fire-alarm lamps, which requires a ruby glass globe, a glass ware which is very expensive and costs three or four times as much as the ordinary clear glass globes. We had not bid to supply any fire-alarm lamps or globes. Neither did the contract call for it. It was entirely outside of the contract. We received some various other lists, half a dozen all together, making about two thousand lamps all together, during the next few weeks. That brought it around to about the middle of November. Feeling possibly we might get the matter fixed up in a business way and have all of this hampering and ham-stringing methods stopped.

Mr. Lewis.— We want to give Mr. Momand all the opportunity possible, but we want to keep in mind the story is going on the record to-day, and Mr. Williams is here to answer it, and we want to give Mr. Williams an opportunity to get his story on the record.

Mr. Momand.— I want to say this to you. In this talk I would not be able to give you some of the vital points in this thing — we have all the records here complete.

Examination by Senator Lewis:

Q. Now, will you permit me to ask you these questions, which I think will help the situation. Have you ever entered upon the performance of the contract? A. We were not permitted to.

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Q. For what reason? A. For the reason that Commissioner Williams in his actions, he absolutely broke the contract with us.

Q. Now, can you tell us about that briefly and quickly? A. The furnishing of these fire-alarm lamps was something entirely outside of the contract. We were totally unprepared to install those lamps, and then we had become so thoroughly imbued with the fact that Commissioner Williams did not intend that we should perform that contract in any manner, shape or form, that every act of the department was against our performing or being permitted to perform it.

Q. Now, what is the present situation? The term of the contract has expired? A. On November 26th, while we were in communication with Mr. Williams, through an attorney in the city here, in connection with these matters, and without any notice to that attorney, who was at the time that this letter was written by the Commissioner out of this city, we received a letter on November 26th, from Commissioner Williams declaring the contract cancelled and terminated. Immediately after that, in fact, the next day or two, new specifications were issued by Commissioner Williams calling for bids for the contract for this year, 1916.

Q. 1916? A. Yes. And the Public Lighting Service Corporation — this bid took place on December 13th last. The Public Lighting Service Corporation filed a bid there for the entire borough of Manhattan and for three thousand lamps in the borough of Brooklyn. We received a letter from Commissioner Williams, under date of December 16th, three days after the bidding, stating that our bids were not responsive to the advertisement and the specifications and contained extraneous matter, and therefore he had rejected the bid and returned our deposit of the bid.

Q. To whom was the contract awarded, if anyone? A. We only learned the last day or two that it was awarded to the Welsbach Street Lighting Company of America.

Q. As the company against which you have been bidding all through last year A. Yes, sir; this company exactly. Now the specifications on which these last bids were made, contained an illegal provision there.

Mr. Lewis.— I think we better take a recess for lunch, perhaps.

Q. What was the last bid for 1916? A. We bid 95 cents.

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Q. Your bid was 95 cents? A. And the Welsbach bid $1.25. They raised the price because the lamps had been reduced. For some of the lamps, and $36 for some of the other lamps.

Q. $36 a year? A. Yes, sir.

Q. Instead of $1.25? A. Instead of one dollar they had been receiving for the entire borough of Manhattan, and 97 11/12 cents for the borough of Brooklyn.

Q. And who furnished the lighting of this territory during the year 1915? A. The Welsbach Street Lighting Company of America continued right along.

Q. The same— A. The same as if it had had the contract.

Q. At what price? A. They have rendered bills to the city of New York at one dollar per lamp per month.

Q. And that is the same as their former contract under which they had operated? A. Yes.

Chairman Burr.— Had they put in any of the fire-alarm lamps during that year?

Q. Did the Welsbach put in any? A. No.

Q. They wanted you to include it in your contract or agreement? A. They wanted something like four hundred in their first batch of lamps — that we received the location of lamps.

Chairman Burr.— We will take a recess until 2:30.

AFTERNOON SESSION

The Committee was called to order at 2:30 o'clock P. M., Assemblyman Feinberg presiding.

Assemblyman Feinberg.— The Committee will come to order.

RAGLAND MOMAND, being recalled for further examination, testified as follows:

Assembly Burr presiding.

By Mr. Lewis:

Q. Mr. Momand, you may proceed with your statement that you care to make additional, and I must ask you to try to be as brief

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as possible because I want Commissioner Williams to have an opportunity to present his explanation, and the Committee wants to get through by 5 o'clock if possible. A. I have very little more to say now. In advertising for the gas lamp contracts for the year 1916, Commissioner Williams issued proposals and asked for bids on work in connection with gas lighting equipments in fourteen districts taking in the five boroughs. Those fourteen districts refer to the district of each gas company located in the five boroughs, as they are the concerns that do this special work. Bids were called by Commissioner Williams as advertised to be opened December 9, 1915, for this work for the year 1916. It involves about a dozen items, such as lamps to be straightened, columns to be releaded, columns to be recalked, columns to be refitted, brackets to be reset, service pipes to be refitted, and here is an item which for the first time I saw in the specifications for New York city: Service pipes to be disconnected. When I saw that item I recognized that that work did not belong to the city of New York, that it belonged to the gas companies, work that they should do at their own expense, and no expense whatever to the city of New York, if it was to be done at all. It was unnecessary work, to begin with. Service pipes to be disconnected, and that means, as it is explained over here in the specifications, here is the explanation of it, that item means, as appears on page 20, item G, "disconnecting service pipes: The street shall be excavated to give access to the gas main, and the service pipe disconnected from the main, and the main plugged." The uniform custom has been for over twenty years, to my knowledge, throughout the country and in the city of New York, when you remove a lamp post for any reason and disconnect the service of that lamp, you cap the service pipe at the base of the lamp post, and fill it up and put your sidewalk down, and it is there at any time in the future that you wish to re-establish a lamp post in that place. The cap for that service pipe cost one cent or less, the cost of a little cap you screw on the end of the pipe. Mr. Deitz, the treasurer of the Public Service Lighting Corporation, made a protest the morning the bids were to be received, against the bids being received or any action taken on them, on the ground this was illegal and did not belong to the city of New York, but to the gas companies, if done.

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The bids were opened, however, and bids were received on that item, along with the other items, and on the 21st of December, Mr. Deitz started a taxpayer's suit against Commissioner Williams and asked for an injunction restraining him from awarding any contract for that work as set out in his moving papers, that this work belonged to the gas companies and not to the city of New York, that the initial expenditure involved for that work for the first year was about forty-two thousand dollars, and if the work was extended to all the lamps that had been disconnected up to the present time, and were to be disconnected during the year, it would amount to $130,000 total money that Commissioner Williams proposed to expend of this city, without any authority whatever, expense that belonged to the gas company, and it would have effectively prevented the restoring of gas service in the city wherever that was done. It would amount to a prohibitory cost of restoring the service pipe to the lamp post, as the street would have to be dug up entirely, and the new service pipe laid. On December 21st, Mr. Deitz started this taxpayer's action and asked for an injunction, and a hearing was to have taken place on the 29th of December, before Mr. Justice Ford. On the 28th of December, the day before this hearing was to take place, Commissioner Williams served his answering affidavit, which is very brief and short, in which he states, that he has rejected all the bids submitted for this purpose or work the day before, on the 27th of December. Of course that ended that suit and stopped the city expending that money for work that belonged to the gas company. That, I think, is about all that I have to say on these matters. I would like, if the Committee will, to have you hear our attorney, Mr. Greene, in connection with one of the illegal provisions in the specifications for this year's gas lamp contract. That will take only a few moments.

Mr. Bronson Winthrop.— May I have an opportunity, on behalf of the Commissioner, of asking a few questions?

Mr. Lewis.— I am afraid, if we permit counsel for Mr. Williams, or Mr. Williams, to cross-examine, we will get into a tangle that will not be at all desirable. I think if there are any questions to be asked, if you will prepare them and submit them to me, I will see what can be done about them.

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FRANK R. GREENE, being first duly sworn, testified as follows:

I was attorney for the Public Lighting Service Corporation in the suit to which Mr. Momand referred, and I also have been the attorney for the corporation throughout the year. I wrote a letter to Commissioner Williams on December 28th last, protesting against the awarding of any contracts on the bids for gas lighting contracts, which he received on the 13th of December, upon the ground, among other things, that they contained a fraudulent and illegal clause. That was a clause which had never been in any previous contract for such work.

By Mr. Lewis:

Q. What was it, in substance? A. It is very brief. I would like to read it exactly. The clause is as follows: "The engineer and his inspectors and agents shall at all times have access to all places of manufacture where materials are being made for use under this contract, and shall have full facilities for determining that all such materials are being made strictly in accordance therewith." I charged in that letter, and I believe it to be the fact, that this clause was conceived and inserted in this contract, for the purpose of forcing the Public Lighting Service Corporation or any other competitor of the Welsbach Street Lighting Company of America that should bid, to disclose to the Commissioner, his subordinates and agents, the information in regard to the factories and foundries that would make the corporation's equipment which he had previously demanded in connection with the bidding of the 1915 contracts, which the corporation had steadily and absolutely refused to give, and which he had abandoned at the time the Bureau of Contract Supervision in the Board of Estimate made its report in favor of giving us the contract, and which he never received. That is the only purpose for which this clause was inserted, as I charged in my letter, and I think the facts fully bear it out. It was never in any contract before. When you consider the nature of the work, its purpose becomes more apparent. This work calls for the furnishing and installing and maintaining by the contractors of certain lamps and equipment. The city of

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New York does not purchase any part of this material. The city of New York does not operate any part of that equipment. It is owned and operated solely by the contractor. There is nothing in the contract showing how this equipment is to be manufactured, or showing what it is to be made of, or requiring it to be made in any particular manner. The only provisions in the contract relate to the appearance of the lamp, which it is provided must be satisfactory to the Municipal Art Commission, and that it must produce a certain required candle power. The lamp equipment consists of a number of distinct kinds of material. The frame of the lamp, the lamp head, so-called, is made of cast iron or sheet iron. That is made in foundries, and the burner is made of brass, which is, of course, manufactured in another foundry, in a brass foundry, and an entirely distinct kind of work, and it also requires glass globes and chimneys, which are manufactured in an entirely different and independent factory. As a matter of fact, they are largely imported from Europe. It also requires gas mantles, the familiar Welsbach mantle, which is an entirely distinct article of manufacture. There is no concern makes all of these things. The Welsbach Street Lighting Company of America does not make them. It buys them, as any other new contractor would have to do. But the Welsbach Street Lighting Company of America does not have to buy these things, because it has them on the posts; therefore, this clause does not apply to the Welsbach Street Lighting Company of America, but only to any competitor of that company. It is a grossly discriminatory and utterly useless and meddlesome and illegal provision in my opinion, as I notified the Commissioner. In spite of that protest, however, the Commissioner has awarded and executed contracts for each of the boroughs for this year, containing this clause, with full notice of our objections to it.

Mr. Lewis.— Do you have some questions you desire to ask of Mr. Momand, Mr. Winthrop?

Mr. Winthrop.— Yes, sir.

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RAGLAND MOMAND, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Momand, in your testimony, you stated that Commissioner Williams made a false statement in his letter to the corporation counsel, dated June 21, 1915; will you tell us what that false statement is? A. He stated that the conditions had changed and therefore suggested that the contracts be rejected and new advertisements made.

Q. Did he go into any details as to in what respects the conditions had changed? A. As to the number of lamps in service.

Q. Have you letter of June 21st available?

Commissioner Williams. — Yes, sir.

(Commissioner Williams produces the letter referred to.)

Q. Will you point out the part of the letter referred to? A. This first statement here is absolutely a false statement.

Q. Read that first statement. A. "The Public Lighting Service Corporation was the low bidder on mantles and other equipment to be furnished to the gas lamps during 1915, but until June 7th, it declined to furnish this department with information showing whether it was or not financially responsible." That is absolutely false.

Q. Is there any other false statement in that letter? A. "Finally it did so, and I am now prepared to award the contract to it, but in the meantime, the conditions have become widely different from what they were at the time of the proposals." — "Since that time the department has found it will be possible to improve a great deal of the street lighting by substituting electric lights for gas lights." The facts are that that created no changed condition whatever. The specification as originally issued reserved the right to the Commissioner to increase or diminish the number of gas lamps in service thereafter, and therefore the change of conditions he refers to was not so. He had all the rights under the specifications as issued for the three previous biddings to add to or diminish the number of lamps in service. Further, showing

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the falsity of that statement, I will read from a letter written by Commissioner Williams to the Board of Estimate, under date of April 6, 1915, two weeks after the bidding of March 23, 1915. In that letter the Commissioner makes this statement: "The department is about to eliminate a great many gas lamps in Manhattan, substituting therefor electric lamps, and if that is done the amount to be saved will be even less than that stated."

Q. Had your company previous to the time that you bid for this work, ever had any municipal contract? A. Not the Public Service Lighting Corporation, but as we stated in our letter to Commissioner Williams in January, after the first bidding, those associated with the company had ample experience for many years with street-lighting work, and had conducted a contract for the city of New York to the entire satisfaction of the city.

Q. You yourself had been identified with such a company? A. Yes, sir.

Q. What was the name of that company? A. Pressure Lighting Company.

Q. In what part of the city had that company operated? A. Brooklyn.

Q. Is it still operating? A. No, sir.

Q. Has no contracts now? A. Do you mean the company?

Q. The Pressure Lighting Company. A. The Pressure Lighting Company has not been active in contract work for two years now, owing to litigation between the president and myself in regard to this New York city business.

Q. How long had the Pressure Lighting Company been in active business? A. About two years previous to that.

Q. And it held city contracts during those two years? A. Yes, sir.

Q. Which years were they? A. 1913 and 1914. I would like to make one more statement. We had occasion to complain to Mayor Mitchel about Commissioner Williams' actions on those first three biddings, and in a report Mayor Mitchel asked Commissioner Williams to make in connection with his actions in reference to the matter, this report, dated September 8, 1915, addressed to Hon. John Purroy Mitchel, Mayor of the city of New

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York, by Commissioner Williams. On the first page of that report, the Commissioner makes an absolutely false statement, knowing it was false when he made it.

Q. Will you point out the false statement? A. He starts off and says: "I write you in relation to the happenings between this department and the Public Lighting Service Corporation since December, 1914," and this letter contains various statements and the reasons.

Q. What is the false statement? A. He says, "Moreover, one of its principal representatives, Mr. Momand, had been prominently connected with the Pressure Lighting Company which had abandoned certain similar contract work in the borough of Brooklyn during the year 1914." The facts of that matter, and as Commissioner Williams well knew, were that the Pressure Lighting Company had that contract for the year 1914, and it expired on December 31, 1913, and I carried that contract and maintained it for five and a half months after it expired, and I do not see how a company can be charged with having abandoned a contract which it maintains for five and a half months after its expiration, and Commissioner Williams approved the bills for those five and a half months, and the entire amount paid to the Pressure Lighting Company.

Q. Had there been a new contract awarded to some other company for the year 1915? A. It was awarded, I think, in April, 1914, and that was under bids which had been received December 30, 1913, for the 1914 contracts, and the Pressure Lighting Company was the high bidder through collusive action between the Pressure Lighting Company president and the Welsbach Street Lighting Company of America, and it was underbid twenty-five cents a lamp a year. In other words, the president of the Pressure Lighting Company, and he is still president to-day, he caused a fraudulent and collusive bid to be filed at the same price at which I had secured that contract for the year before, and the New York and New Jersey Gas Lighting Company, which was operating in Brooklyn at that time, underbid our company twenty-five cents a lamp and secured the contract.

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Q. The period of five and a half months during which you continued to light without a contract, was a period covered by a contract which had been awarded against you? A. No, sir; it was not awarded until about April. It was awarded at the time I removed our lamps in May. I had to write Commissioner Williams and suggest that he order the lamps off before they came off.

Q. Did he order them off? A. Yes, sir; about the sixth of May, as I recall the date.

Q. Have you anything else you wish to suggest? A. That is all.

Mr. Lewis.— Now, I think, Commissioner Williams, we will let you tell us what you have to say.

Assemblyman Burr.— Mr. Momand, after that report was made to the Mayor, in which you say that the Commissioner has made a false statement there, did you go and see the Mayor?

Mr. Momand.— We tried several times to see the Mayor, and we called at his office several times, and wrote him several letters.

Assemblyman Burr.— Did you get any satisfaction from him at all in the matter?

Mr. Momand.— We have not seen the Mayor to date, and we also tried to see Commissioner Williams on numerous occasions, and never saw him from December 30, 1914, up until to-day, in his office, and we wrote him numerous letters asking for interviews and called several times and never able to see Commissioner Williams.

WILLIAM WILLIAMS, being first duly sworn, testified as follows:

Examination by Mr. Lewis:

Q. What is your official position? A. Commissioner of Water Supply, Gas and Electricity for the city of New York.

Q. And your jurisdiction extends throughout the entire city? A. My jurisdiction in respect to all of those matters extends throughout the whole city, which covers an area of some three hundred and eighty square miles.

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Q. When were you appointed to the position of Commissioner? A. February 3, 1914.

Q. You have heard the testimony of Mr. Momand upon the subject of the lighting contract, gas lighting contract, for 1915, have you? A. I have.

Mr. Lewis.— Perhaps, Mr. Chairman, the better way is to let Commissioner Williams go on and tell his story, just as Mr. Momand did. I presume he has taken notes of Mr. Momand's testimony.

Assemblyman Burr.— He can go as far as he likes.

Mr. Williams.— At the end of 1914, as usual, bids were solicited for the care of these — of the mantels surround these gas lamps as set forth, and bids came in, and while I was considering them, I received a telephone message from Comptroller Prendergast warning me, or suggesting to me, that I look very carefully into the responsibility of the various bidders, and telling me that city contracts sometimes got into hands of irresponsible bidders, and that no good came from it.

By Mr. Lewis:

Q. Let me ask you just two or three questions to sort of get this record straight. Is it true that the city owns the gas lamp posts? A. It is.

Q. And everything above the ground is owned by the city? A. The post is owned by the city. The globes and the mantles inside are not owned by the city.

Q. They are to be furnished by the contractor? A. Yes, sir.

Q. Who undertakes also to care for them and light and extinguish them? A. Yes, sir, that is correct. Two contracts are necessary to carry out the lighting of gas lamps.

Q. One with the producing company, gas producing company, I suppose. A. Yes, sir.

Q. And one with the company caring for the lamps and lighting and extinguishing the lights? A. Yes, sir; and that covers the situation, except the contract for repairs to the lamp post and the gas equipment concerning which you heard. The whole top

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is furnished by the Welsbach Street Lighting Company of America, or whatever company has the contract.

Q. By the contracting company? A. Yes, sir.

Q. Now, if you will, proceed. A. There is a picture of what is furnished by the contracting company. We could learn nothing about the financial standing of the Public Service Corporation. It was a new bidder, unknown to the department, and I took steps to see whether or not it was likely to prove a responsible bidder, and amongst other things, we gave President Rueh, and with Mr. Momand present, a hearing on February 5th, which hearing has not been referred to in the previous testimony. I have a copy of it here, and I read short extracts therefrom. This is the testimony of Mr. Rueh: "As to the amount of stock, I cannot tell the amount of stock the individuals carry. I simply would like to go on record that our company is fully able to carry out this contract, but as regards the financial way or in any other manner, for obvious reasons I do not care to be very frank with you to give the insides of our corporation to anybody at the present time." Later, "Q. You never asked for any credit? A. No, sir. Q. You would have to ask for credit in a contract of this size? A. Why? Q. Well, have you got fifty thousand dollars in cash paid in? A. I think we have answered your questions fully. Q. You would have to have credit? A. I don't say that. Q. Are you willing to make a financial statement of the condition of the corporation, personally to the Commissioner, if you wish? A. Well, I would have to see the other gentlemen about that first. We are not running this company alone." To make a long story short, that financial statement was finally elicited by Mr. Saunders, of the Board of Estimate, some time in April, and as soon as it had been elicited, I wrote the Corporation Counsel, who was advising me throughout at every step in these matters, a letter which you have seen, and which I shall put on the record, and I think it is dated June 21st, stating that, "I am now prepared to award the contract to the company, but in the meantime conditions have changed." I pass on to the second bid —

Q. May it not be well for you to explain what you meant by the statement, conditions had changed in the meantime? A. Gladly.

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I thought I would develop that later. I will say right now that I have a very interesting table here showing how the city had been gradually getting away, as all other cities, from gas lighting, and turning to electricity. I do not think you know these figures. In 1906 the percentage of electric lighting to gas lighting measured by the bill paid was 49 to 45. In 1908 it was 53 to 40. Note the raising of the electricity. In 1910, 62 to 33. In 1912, 69 to 28. I am accused of tearing up gas by the roots. Somebody else had done the initial tearing. 1913, 70 to 27 per cent. I came into office in 1914, when the figures were 72 to 25 per cent., and in 1915, 77 to 21½. The department for the last ten years has been constantly on the alert to substitute electricity for gas, as opportunity presented itself.

Q. Is that because of financial reasons? A. With me it was two reasons. I cannot speak for my predecessor. First, the obvious reason, which everybody knows, that electric lighting is the lighting of to-day, and every large city in the world has it, and one does not have to offer an excuse for wishing to put electric lights in where formerly gas lights were. Secondly, by April or May, there came on the market for the first time a small lamp of the new nitrogen gas filled type. That leads me to say that in the previous December, December, 1914, there were installed in Greater New York nineteen thousand arc lamps, the big purple lamps, costing from ninety to ninety-five dollars a year apiece. I heard of the advent of the nitrogen lamp, and I became satisfied in my own way it was the lamp of the future, and inside of thirteen months, every arc lamp, the nineteen thousand arc lamps, have been removed from Greater New York. There is not one being paid for under contract. A few may be burning still because the companies have not had an opportunity to change, and the substituted lamps are giving a better light and costing from seventy-seven to eighty dollars apiece.

Q. What are those, 200 watts? A. A great many of them are, but those include the 300 and 400 and some 500 watts. For instance, Fifth avenue is lighted to-day with pairs of 400-watt nitrogen lamps, whereas before it was with arc lamps costing a great deal more. You cannot see an arc lamp on Manhattan Island

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to-day, I think. There may be an isolated one. Last year I had the three and four-hundred-watt nitrogen lamps and made use of them with a colossal saving to the city, and the saving is four hundred thousand dollars per annum, and lighting more than before. About April or May there came along this smaller 200-watt light, and just as soon as it came on the market, we began making comprehensive studies with a view to seeing whether we could not introduce it and improve the illumination and save expense. There it is. There is the 200-watt electric lamp on the new installation, and those are the posts that have taken the place of the gas lamps that we have torn out. (Referring to photographs.)

Q. Do these posts belong to the city? A. Yes, sir; and I will come to the question of the cost of them and everything else. What we found was this —

Chairman Thompson presiding.

Witness (continuing).— What we found was this, that two of these beautiful lamps, costing each, at that time, forty-six dollars, and costing to-day $43, take the place of five gas lamps, and five gas lamps at $22.50 cost $112.50, and twice $46 made $92. There was a saving, of course. The lamp post cost $20, but that is good for twenty or twenty-five years, and writing off a fair amount per annum for the lamps, there was a material saving. In addition, the illumination at the lamps was double what the illumination was at the gas lamps, and what is more important, the illumination at the darkest point between the lamps was 30 per cent. greater than it is between two gas lamp posts. Those are the changed conditions which induced me on the occasion of the third bidding, which was based on proposals for nine thousand gas lamps, and caused me to write Mr. Polk as I did, and I asked for the privilege of inserting a copy of the letter in the record saying, "Shall I, in view of the fact that I found now we will not want nine thousand gas lamps, shall I commit the city to a contract which means it may be compelled to furnish nine thousand lamps?"

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Q. Didn't the specifications contain the provision you might add to or reduce the number of these gas lamps at will? A. The specifications contained that clause, and it must be read in connection with the proposals, which, as you know, under any contract in New York, under the decision in the Hart case, 187, I think, New York, that case requires that the quantities in contract shall be stated, and those quantities form the basis of the contract, and I suppose the specifications must be read in the light of the proposals. There is no doubt about that. However that may be, my legal adviser is the Corporation Counsel, and I cannot go against his legal advice without incurring danger. I placed the matter fully before him and he wrote me back and here is what he wrote me —

Q. Did you suggest to the low bidder that because of the changed conditions you might want to reduce the number of lamps? A. Did I suggest that because of the changed conditions we might reduce the lamps? It is in that connection, I suppose, that Mr. Ackin had the talk referred to by Mr. Momand with him, inquiring, I believe, though I don't know just what happened there, whether or not he would accept for a lower amount. That was at a time, I suppose, when I did not appreciate whether or not I could reduce the quantities under that contract. It must have been before I referred the matter to the Corporation Counsel. We have a multitude of things to do in that department, and lighting is only one of our activities.

> "In view of the facts submitted for my consideration, I advise you that it would be improper for you to now award the contract to the Public Lighting Corporation on advertised proposals which will not represent conditions which are likely to arise and continue throughout the term of the contract. All bids submitted should, therefore, be rejected, and this work should be re-advertised, on the basis of appropriate new proposals, which should be definite in detail."

I have skipped reference to the second bids, as to which it has been testified that it was in keeping with the specifications. It was for a limited territory, and, secondly, it was for 4,500 lamps

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only, whereas the proposals called for 9,000 lamps. That bid was in no sense responsive to the proposals for bids. You have heard something about that clause that requested to state within what district you bid — you will perform the work. It was a very unfortunate clause that used to be in all of the contracts, and which has been taken out of them, and as soon as possible I got it from revising, with the aid of the Corporation Counsel, all the contracts, and it was put in there originally, I suppose, because it would not be known in what districts the gas companies and the electric light companies could furnish their service. They alone knew, because they knew where their conductors went and their wires went. As to those companies it was in violation of law, because the statute requires the Board of Estimate to determine the districts, and the Board of Estimate last year, and now for the second time, does determine the districts. This clause was left in, as the result of drafting old contracts, but it was no invitation to them to select a small piece of territory and cut down the number by one-half.

Chairman Thompson.— What is the clause you are talking about?

Mr. Williams.— Bidders will state within what districts of the city they will perform the work. What happened was this, the Welsbach Street Lighting Company of America offered to perform it in the whole of the Borough of Manhattan.

Chairman Thompson.— Of course it had its lamps there anyway?

Mr. Williams.— Yes, sir, or for whatever reason. The new people offered to furnish it within a limited amount or portion of the city. Supposing for argument's sake, I had accepted their bid, as I couldn't have, seeing it was only for 4,500 lamps, how could I have got the rest of Manhattan lighted?

Chairman Thompson.— How do you light it now? the other fellows' contract having run out?

Mr. Williams.— To-day, at the present time, under the 1916 or 1915 arrangement?

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Chairman Thompson.— 1915 you didn't let any contract?

Mr. Williams.— No, the Welsbach Street Lighting Company of America kept on lighting it, and will have to settle its account with the Comptroller.

Chairman Thompson.— That is probably the way you would have done it if they had taken part of the work, wouldn't you?

Mr. Williams.— I don't know.

Chairman Thompson.— They had the lamps there, and the gas was there, and there wouldn't have been any trouble, would there?

Mr. Williams.— I don't consider the bids were at all comparable.

Chairman Thompson.— You asked how to do it, and I suggested the company was already there and had their lamps and mantles and everything at their disposal, and would probably have continued as they did?

Mr. Williams— I don't think they would. The Welsbach Street Lighting Company of America bid this year, and it has gone up fifty per cent. on the lamps. Why? Because owing to the enormous reductions in these gas lamps, and there are only 1,600 in the city today, and they have a smaller — they have their lamps scattered about in a smaller amount. If the choicest bit of Manhattan had been given to this company, it is not at all probable the rest of the district would be lighted by the Welsbach Company.

Chairman Thompson.— I understood you to say they told you to select the territory?

Mr. Williams.— No, sir. They picked out the choicest part of Manhattan and left the rest for the Welsbach Company.

Chairman Thompson.— Of course you were sorry for the Welsbach people?

Mr. Williams.— I don't think my sorrow has manifested itself in any practical way, as I have reduced their lamps to 1,600.

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Chairman Thompson.— Of course this is true, it don't make any difference which store you go into, a gas store or an electric light store, you are dealing with the same proprietor all the while?

Mr. Williams.— Of course that situation is not of my making.

Chairman Thompson.— You are not cutting off any profits from the individuals who own the gas company by throwing them out and taking electric light?

Mr. Williams.—Well, you see, Senator, what I am after is to reduce the amount that the city has to pay out for lighting, and I am lighting the city today at $810,000 less per annum today than two years ago. That is a thing that talks. It seems to me that is concrete.

Chairman Thompson.— Does this bid cover the whole city lighting?

Mr. Williams.— No, sir. The second bid did not.

Chairman Thompson.— Did any of the bids cover the whole city?

Mr. Williams.— No bid covers more than a borough. I am sorry you did not come in a little bit earlier, because we have gone back to the second bid, and the third bid was disposed of by the Corporation Counsel, in view of the changed conditions which you may or may not have heard something about before lunch, which changed conditions were that I had found by April, owing to the introduction of the new electric lamp, we would not need more than about three thousand of those lamps.

Chairman Thompson.— What is the total amount of this bid? They bid 90 cents or something a lamp, they bid 93 or 95 cents a lamp, and for how many lamps was the maximum of the first bid?

Mr. Williams.— Nine thousand.

Chairman Thompson.— That would be not over eight thousand and a half dollars a month?

Mr. Williams.— Yes.

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Chairman Thompson.— How could you save eight hundred thousand dollars a year on that contract?

Mr. Williams.— I could not on that contract.

Chairman Thompson.— This must have been a small part of the city lighting involved in this contract?

Mr. Williams.— Yes, sir, a very small part, but we have made the small part work. While there were ten thousand of these Welsbach lights a year ago, there are only 1,600 to-day, and there are two electric lights in a place instead of five gas lights, and double the illumination.

Senator Foley.— Didn't that affect the lighting of the outlying districts?

Mr. Williams.— I have had various kinds of complaints, but you would have to give me the concrete complaint before I know anything about it.

By Chairman Thompson:

Q. I am skeptical you can install and operate two electric lights cheaper than five gas lamps. A. The facts are here, and it is a fact, the annual cost of a mantle gas lamp is $22.37, and the annual cost of two of these new electric lamps is $43 each. Now, five times $22.37 are $111.85, and twice $43 are $86.

Q. You have to tear out the gas and put in the electric? A. The answer to that is that the $43 includes the first installation of the electric, and the post the city has to pay for, and it costs $20 and is good for twenty-five years, and its value is highest there during the first year. We are getting along on appropriations that are eight hundred thousand dollars less than they were.

Q. You might make a difference to the city, but even at that, the electric light and gas company would make more profit out of your two electric lamps than out of the five gas lamps? A. I don't know as to that. I am trying to save money to the city and give good lighting. If somebody can point out how we can make the electric light companies give light at lower rates, I should be glad to have them do it.

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Q. Make your competition easier to the electric light companies and let them in smaller districts so everybody can get a chance at it, and you will get them cheaper. A. I think you have a misapprehension as to the number of electrical companies that would be competent to do the street lighting, and would bid.

Q. It isn't much trouble; I am a director of a company, and I know something about it. A. I would be very glad to have that pointed out to me in detail.

Q. It is going to be a good deal of trouble, on account of the conditions, your franchise conditions, and your company is pretty well entrenched, but if you could fix it some way so there could be real competition, you could get it cheaper very speedily. A. I have been driving — the department has been quite successful in driving the prices down, and I will be very glad of getting additional help to bring them down lower.

Q. You ought to make friends with the competitors, and I think you will be able to do it; wherever there is a chance for a competitor, let them get in and bid and do it. A. That is a large subject, and I am most anxious to have anyone lay facts before me under which I can, without hurting the lighting of the city, and its efficiency, which is very good, where I can get cheaper rates.

Q. I want to say this to you, I don't know whether I am competent to argue with you about the lighting of the streets of the city of New York; it is a different situation than I am familiar with. A. Now, I would like to put on the record that we now execute 61 lighting contracts under 41 appropriation accounts in 28 lighting districts, and the districts are fixed by the franchises of the companies, and, in addition, determined under the charter by the Board of Estimate and Apportionment. While the Chairman was out, I read from the report of a hearing which was given President Rueh on February 15th, for it enabled him to state what the assets and liabilities of the company were, and I read the statement to show that " as regards the financial way, or in any other manner, for obvious reasons I do not care to be very frank with you," and I also read, " Q. Are you willing to make a financial statement of the condition of the corporation, an appraisal to the Commissioner of the condition of the corporation, personally to the Commissioner, if you wish? A. Well, I would have to see

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the other gentlemen about that first. We are not running this company alone." I also stated my suspicions were first aroused by a telephone message from the Comptroller warning me about the possibility —

Q. That depends largely on the condition of the financial statement. Were they ready to give a bond? A. They gave a bond.

Q. Why wasn't that sufficient? A. Because I wanted to make sure I was going to have performance and not a possible lawsuit on my hands for non-performance.

Q. What difference did that make? You expected to take a good bond, didn't you? A. Yes, sir, but we don't want a lawsuit.

Q. How would you be protected from a lawsuit with a bond in there and — supposing they did not have a dollar and gave you a good bond; how would that protect you from a lawsuit, or get you into one? A. They might give a bond, and yet be unable to go out and do the work, which was of rather a complicated character.

Q. If the bond says they would do it, and the bond was sufficient, where would you save? A. We have that situation. I have their bond, and they have broken their contract, and we can go in and sue for these three months.

Q. Why don't you? A. Perhaps we will.

Q. You ought to right away, and if any lawyer wrote me a letter like the fellow wrote you, if it wasn't so, I would sue him for something else. A. There is plenty of time for that, too. I haven't taken my last step yet.

Senator Foley.— Was the communication from Comptroller Prendergast with respect to the responsibility of any one bidder, or a general warning against any bidder?

Mr. Williams.— He warned me about this particular bidder.

Witness (continuing).— Now, I got that financial statement, finally, and I got it through the efforts of Mr. Saunders, who is here to tell you how it happened. It has been stated that — you see that the second bid, when I couldn't get any financial statement, I put the whole matter up to the Board of Estimate, and suggested that they give the contract to the high bidder, and Mr. Saunders, to whom it was referred, did not agree with me, and

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came to talk it over, and he came and said, if, in consideration of an unsigned paper he had, I would recede from my position, and I said I would not.

Q. I don't see why a man should not be permitted to do business if he can get a bond; why can't a poor man with ability be recognized? A. It is a serious matter to keep the city lighted, and the bond might give us a suit for damages in case he did not do it, but it wouldn't insure performance.

Q. Are these bonds any good, anyway? A. I suppose they are, yes, sir.

Q. I sometimes wonder. You take, for instance, in the Highway Department, they talk about all of these things, but they never prosecute any bonds. What is the use of paying premiums on bonds, unless they are used? A. I would rather have known financial responsibility than a bond. It is much more important.

Q. If you get a bond in the very form you want it written, still it is no good? A. Mr. Senator, it is not good, it is not alone good in respect of so vital a matter as keeping the streets of the city of New York lighted. I am not called upon to take any chances whatever in regard to that. These people said, "We don't want to be frank with you."

Q. I can see plenty of reasons why men should not want to be subjected to supplementary proceedings as to their financial ability to be given out to their competitors; I have been attorney for companies, good and square and honest, who would give bonds to carry out a contract, and would not want to expose their financial position. A. I take it as a reasonable request to ask for a statement of assets and liabilities, and finally got it. It has been said that I requested to withdraw my letter of April 6th to the Board of Estimate, and asking permission to award the contract to the high bidder because Mr. Saunders came and said he disagreed with me, and the fact is I told him I would not recede, and he then suggested that he try and secure himself from them a statement of assets and liabilities which he finally did, and I withdrew the letter from the Board of Estimate of April 6th, but the statement he brought me was not satisfactory, and I made Mr. Rueh amplify it, and he amplified it before a notary public in the office of the department, and I was then ready to award the contract to the

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Public Service Lighting Company, but in the meantime the new two-hundred-watt lamp had come upon the market, which enabled us to dispense with a lot of the lights, and I wrote the corporation counsel and said, "Here are changed conditions, and in view of that, had I ought to award the contract?" and he said, "No, throw out all bids and advertise again."

Q. The 200-watt tungsten came on the market when? A. 200-watt nitrogen, in about April or May, 1915.

Q. You had the 200-watt tungsten before that, didn't you? A. Yes, sir, but the tungsten came before, but we are not using the tungsten for these lights on the high poles. We are using the nitrogens.

Q. They have been using them for the last three years, haven't they? A. No, sir, only about less than two years they have used the nitrogen. I would like to read into the record what appeared on the calendar of the Board of Estimate.

Chairman Thompson.— I will let you go through your statement without interruption, and ask whatever questions I wish at the conclusion of your statement. I do not want to annoy you.

Mr. Williams.— Not at all. That don't annoy me. I will read a very few lines into the record from the calendar of the Board of Estimate: "The Commissioner states that having based his former request upon the ground that the low bidder was unknown to the proper officials of the department, and declined to furnish such information as would enable the Commissioner to form a conclusion as to its probable capacity to perform the contract, he is now willing, in view of the changed attitude of the low bidder, and because of the fact that it has since furnished under oath information in relation to its resources from which it may be reasonably concluded it can perform the contract, to award the contract to the said low bidder." The bids on written advice and almost direction of the corporation counsel were again thrown out, and this time we called for bids on a smaller amount of mantle lamps running down and tapering off to about two thousand towards the end of the year, and we have lived up very close to that schedule, and there are about 1,600.

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By Chairman Thompson:

Q. It is rather hard to go in, in the first place, and compete with a company that is already in, and have their work installed, isn't it? A. I suppose so.

Q. For the reason the company there, with their mantles and property all installed can afford to bid cheaper than a new company that has to make new installation, can't they? A. I couldn't — you say they could afford to. They would have bid lower. The Welsbach Street Lighting Company would have bid lower.

Q. The company that has the lamps installed and they have a one-year contract as for the next year, that company is in a better condition to bid low than a new company that has put up new capital to install new stuff; that is so, as an abstract proposition, isn't it? A. Yes, sir, there are peculiar conditions in New York city connected with the lighting proposition.

Q. We are talking in the abstract. A. I should think so, yes, sir.

Q. If you have a one-year contract, you would have to get more money than if a two or three-year contract, for the same reason? A. Yes, sir, but by statute the contract is limited to one year, unfortunately.

Q. By the same reasoning, you could bid cheaper for your year's contract than for ten months, or nine months, or six months, or five months, couldn't you? A. I suppose so.

Q. And you could also bid cheaper if you had three thousand lamps, or nine thousand lamps, for your contract per lamp, than you could for three thousand or two thousand, couldn't you, as an abstract proposition? A. Will you read that again?

Q. If you had a block of nine thousand lamps, you could naturally bid cheaper than for a block of two or three thousand? A. That depends somewhat upon the location of the lamps.

Q. If located together contiguously? A. Yes, sir, I suppose so.

Q. And you could bid cheaper on a certain number of contiguous than in certain portions and districts isolated? A. Surely, yes, sir.

Q. Just so this competitor coming in, without reference to who he is, or his financial ability, if he started out to compete against

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the company already entrenched, he would have to have some courage, and after he bid for a while and he found by successive bidding first he is limited to ten months and later to seven months, and later to less than six months, you would not hardly blame him for getting kind of angry about the situation, would you? A. I would blame anybody for getting angry under these circumstances. The facts are all against the other side.

Q. Everything that was done by your department rather hurt him in a way? A. He began by hurting us, if you like.

Q. The first time he hurt you, he would not give detailed information as to his finances; he gave a bond and would not give detailed information? A. Yes, sir.

Q. And after a while you compromised and took some more than he first gave and less than you demanded first? A. I did not yield on the asset and liability statements, and if he had given that in January, he would have had the contract.

Q. Mr. Smith says that, from his looking at the record, in the first place, you asked the name of the factories where he produced his goods, and those details, and afterwards did not get them? A. I did not insist upon all the questions I put first. I asked for a list of stockholders. It may be I went a little too far. I usually try to protect the city.

Q. Every time anything happened, it got worse for them, and when you got into April there was a chance for eight months, and that was reduced from ten, and along in July to about five months, which was a good deal worse, and he had to put up a capital and only for five months, and when he got started with nine thousand lamps and got reduced to two or three months, and you immediately began to run them out. A. No, sir. In the interest of better lighting, I was running out the Welsbach Street Lighting Company.

Q. Do you blame him for getting angry about it and cross about it? A. Really it doesn't seem to me it is an issue whether either of us gets cross or not.

Q. He had hard luck all the time, didn't he; put it that way; he was unfortunate all the while? A. The hard luck was of his making.

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Q. And all the time the company in was still continuing with the same old lamps and the same old mantles and the same old price? A. The company has not been paid anything, and if its price is improper it can be made to sue.

Q. And you don't doubt but what it can recover the same old price on a suit, do you? A. I don't know. It is in the Comptroller's hands, under the charter. Anyone that thinks they are charging too much can bring a taxpayer's action, I suppose, or some action, to test it.

Q. I was trying to see if I couldn't get a good friendly feeling between you gentlemen here, and as long as I can't go ahead. A. Under the section 246 of the charter, the Welsbach Company is entitled to the reasonable value of those lamps for 1915 and nothing more. Now I merely want to say that all of these issues, all of these facts, have been spread on the record in a case brought against me in the Supreme Court, and that enjoined me from paying these Welsbach bills for 1915, and I will attach to the record the opinion of Judge Cohalan rendered September 23d, dismissing the motion for an injunction, which decision was unanimously affirmed in the Appellate Division.

The decision referred to is as follows:

The extract from opinion by Judge Cohalan is as follows:

> "The only relief which the plaintiff on this motion demands is that the Commissioner of Water Supply, Gas and Electricity shall be enjoined from auditing and certifying for payment any bills heretofore presented by the Welsbach Street Lighting Company for alleged services rendered by it in connection with the lighting of the public streets of the city of New York. The plaintiff asserts that the bills of the Welsbach Street Lighting Company are excessive and extortionate. * * * The repeated advertising for bids was due, according to the Commissioner, to the fact that he was not satisfied with respect to the standing and responsibility of the Public Lighting Service Corporation and its representatives. * * * However, on the 22nd day of July, 1915, the contract was awarded to the Public Lighting Service Cor-

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poration. * * * In the meantime lighting service is being furnished to the city by the Welsbach Street Lighting Company. The plaintiff contends that this company is overcharging the city, and that the reasonable value of its service does not exceed seventy-five cents per lamp per month, and asks that the city be enjoined from paying any moneys in excess of that sum. It is significant to observe that the Public Lighting Service Corporation in its three opportunities to bid for the contract in the borough of Manhattan in no instance made its bid less than ninety-three cents per lamp per month, and one bid was as high as ninety-five cents. * * * When that company (the Welsbach Street Lighting Company), does submit bills for services they must be presented to the Comptroller in the form of claims, owing to the fact that the service which is being rendered at the present time is not in pursuance of the terms of a contract, as required by law. * * * There is no provision which authorizes the Commissioner of Water Supply, Gas and Electricity to audit or pay moneys, which the provisions of any restraining order could affect. To maintain a taxpayer's action waste or injury to the public funds must be shown. The moving papers do not show that the plaintiff is being injured or that the city funds are being wasted or that there is not an adequate remedy in law (People, etc. v. Canal Board of New York et al., 56 N. Y. 394; Livingston v. Sage, 95 N. Y. 289; Stockton v. City of Buffalo, 108 App. Div. 170). All the material allegations in the papers of the plaintiff have been denied by the defendants, and I am constrained to hold that it would be improper, under the circumstances and before a trial, to make a restraining order on this application. The plaintiff has not established a clear, legal and equitable right to the relief demanded *or any part of it,* with the affidavits conflicting upon the facts. A situation where the plaintiff apprehends injurious consequences to himself, but which neither actually exists nor is threatened by the defendants, is not sufficient ground for an injunction. Motion denied."

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Nothing has been brought out here today, I think that was not brought out before Judge Cohalan. The fourth time the contract was given to these gentlemen, and they were given, as they asked, from forty-five to sixty days in which to make ready for it, and we did not issue any orders right away, as we might have done, and when at the right time we gave them orders for two thousand lamps, about a month, they made no pretense of performance, and they did not tell us that the orders were in any way improper, and did not ask to modify them, and we never heard anything more about it. Nothing at all was done, and after some seventy days or more I laid the facts before the Corporation Counsel who himself drew the notice of abandonment of the contract, and it was served on them. They had every opportunity, and we refrained from ordering them to install any of the lamps which would not last over the first of the year. We might have ordered them to install lamps which would only last to December 1st, and we were careful to not do that, and gave them the benefit of the lamps which would burn throughout the rest of the year. The point has been made that I delayed the execution of that contract. As a matter of fact I awarded the bids eight days afterwards, and the point that I compelled them thereafter to go before the Municipal Art Commission is not a good point at all, because it is the law of New York State that all new equipment must be passed upon by the Municipal Art Commission. We told them so in February, 1915, and we were friendly.

Q. If you did, they were to blame. A. We did, and it is in the specifications, but I want to read two lines only from the hearing of February 5th at which Mr. Rueh and Mr. Momand were present in the department. My secretary said, "Any change in the equipment would have to be approved by the Municipal Art Commission" February 5th. In addition the notice is in the specifications, and it is perfectly clear, and in addition it is in the law. It does not seem very gracious on their part to try and make out I was trying to delay the execution of the contract in that way, because I delayed in no way whatever.

Q. Do they approve of all the lamp posts we see in the city now? A. They do, of the new ones, and those are the lamps that

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took the place of the gas lamps, and they have all been approved by the Art Commission.

Q. I have seen a lot of them that looked worse than those? A. Yes, indeed.

Q. I wonder if they have jurisdiction over the elevated roads we have around here, the Municipal Art Commission? A. I don't know. I don't think its troubles extend to that. Works of art and fixtures only, and those are not works of art. I desire to note on the record the fact that orders were given the Public Service Corporation for gas mantle lamps aggregating at least two thousand on September 16th. These are all the orders of September 16th that I am referring to, and September 18th and September 24th. Now, and I am sorry to bother you with these details, but they bring them up, and I want to answer you on the record. A great point has been made that we gave them five hundred and twenty of those red fire alarm lamps to light. Those were included, and there happened to be those fire alarm lamps included in the twenty-two hundred lamps which we gave them an order to light. The city furnishes the globe around those fire alarm lamps, and that was in the specifications. It does happen that the red dome was to be furnished by them, and I am told that they were already informed of that before hand, but if they were not, and if by any chance as to five hundred lamps our orders were inaccurate they could have asked us to amend them and called our attention to any oversight there and we would have changed them, but irrespective of all that there were seventeen hundred lamps ordered for the white lights, the validity of which orders cannot be in any way questioned. Not one lamp was installed under that contract, and they never offered any excuse prior to the time when we served notice of abandonment of the contract under advice of the Corporation Counsel, and they never raised any word at all about those orders. I do not know today why they did not perform the contract that was given. So anxious are we to eliminate the gas mantle lamps which are more costly than the electric lights that you can see today something you have not seen before for a great many years, at all the fire alarm lights there are open flame lamps now instead of the Welsbach ones.

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We get rid of the expense of maintaining those Welsbach lamps by putting in the open flame burners, and the expense has gone up on account of the lamps being scattered, and it is cheaper to light the lights with the open flame burners than to pay the Welsbach people for the scattered lamps.

Senator Lawson.— You have not begun any system to eliminate the Welsbach Lights in Brooklyn, have you?

Mr. Williams.— Yes, sir.

Senator Lawson.—Where?

Mr. Williams.— Park slope, and Park place, and it is a little harder to do it in Brooklyn, but we are going to do it of course.

Senator Lawson.— Is Brooklyn more difficult to manage than Manhattan?

Mr. Williams.— The lighting of Brooklyn is more irregular, and the lights very unevenly spaced, and there are not so many electrical conduits in Brooklyn, and we cannot install the new electric lights in place of the gas lamps except where there are conduits.

Senator Lawson.— Some time when the eastern district in Brooklyn is under consideration, I will be glad to prove to you the space is not more uneven than in Manhattan.

Mr. Williams.— I do not say it is everywhere in Brooklyn. Wouldn't you rather have electric lights put in there than have the gas continued?

Senator Lawson.— I would prefer it to the gas mantle lamps.

Mr. Williams.— Is it conduited?

Senator Lawson.— Along the main thoroughfares?

Mr. Williams.— All right, we will try and do some business there then.

I will pass to another topic which I will dispose of very briefly. It was pointed out I had solicited bids for the repairs to gas lamp

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equipments. A small contract, and a most troublesome one, I rejected the contract twice, the bids twice on that contract, during 1913, and I rejected them during 1914 and made no contract for the cost of those repairs, and left them to their remedy, because I couldn't come to an adjustment with them, and I rejected them the first time in 1915, and subsequently made a contract, and the bids came in, and during 1916 to which Mr. Green has referred and were irregular in that the companies had in eighty per cent. of the cases attached a condition to one of the clauses of the contract and protested against it, and said they would not accept it, and I don't accept bids where the bidders have attached conditions to contracts approved by the Corporation Counsel. In three instances the items were high. Those bids were going to be rejected anyway. This suit came along. The point made in the suit by the tax-payer was the city ought not to pay for the price of disconnecting the service pipe at the main, and it is stated that it has been the uniform practice to disconnect those service pipes at the curb and not at the main. I take issue with that statement. The best information I have been able to get, and I have a competent inspector of the department here who knows of hundreds of instances in which those disconnections have occurred at the main, and not at the sidewalk, and I take issue with that statement that it has either been customary or that it is proper to disconnect the service pipes at the sidewalk, the reason being that these are small service pipes of one inch and their life is limited to, say, twenty years, and they are hidden in the ground, and they may rot or leak, and if disconnected at the sidewalk, their ends get hidden, and there is danger of an explosion, and the only businesslike way to kill the service pipes is to cut them off at the main, as has always been done. I am only too glad if anybody can show me how the city can make the companies do that work. As a matter of fact, it has been the practice of fifteen years in the department, for the city to pay the companies for doing that work. I am not going — I have no knowledge, and nobody has told me any law or any ordinance or shown me any contract under which I can compel the Consolidated Gas Company to do that disconnecting work, and I wish they would.

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I am open to suggestions right now, but I want somebody to give me something specific or direct to the point.

Chairman Thompson.—What do you say about that, Mr. Momand?

Mr. Momand.— The work of disconnecting the service pipes at the mains the Commissioner is very correct in saying he has no authority to compel the gas companies to do that. The gas company, it is their property as much as the mains passing up and down the street, and there is no occasion to do anything to cap them at the lamp post. It is not a fact that there has been any considerable number or particular number of them cut at the main, and if it has been done in some special cases, it should have been done at the expense of the gas company and not the city. That is the first specification in which the clause ever appeared. If the city has done it and paid for it, the specifications have never called for it, and the contracts, and this is the first time in this city.

Chairman Thompson.— What does the franchise require?

Mr. Momand.— That the work be done by the gas company.

Chairman Thompson.— What do you say to that, Commissioner?

Mr. Williams.— I would like to see the particular language of it.

Chairman Thompson.— Haven't you looked into it?

Mr. Williams.—We are looking into it now.

Chairman Thompson.— Didn't you look into it before you advertised for bids?

Mr. Williams.— Yes, sir, as much as anything that has been a matter of practice for twenty years.

Chairman Thompson.— Did you look into the franchise to see?

Mr. Williams.— Yes, sir, and I have papers on the franchise, and I cannot find anything which says the companies must at their expense cut the service pipes off at the mains.

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By Chairman Thompson:

Q. Wouldn't they be liable for an explosion, if it occurred by reason of their neglect to properly take care of it, if an explosion occurred? A. Maybe they would be liable, but we don't want that situation to arise.

Q. I have you both talk about it, because to my mind it is the most important thing there is in this whole matter. A. I am not going to advertise for the bids again until we go to the bottom of this thing. I say to you it has been the practice not only for these to be cut at the mains, and I ask you to call my inspector who knows about this, if you wish, that the city has been paying, as I understand it, for that work, because it has paid for the cost of removing a lamp post, and the only difference between now and formerly is that I have specified the — I have subdivided into two parts the work of removing a lamp post, and I will tell you exactly why I did that. They were charging me too much for removing a lamp post and running the charges up. I have my own men to remove the posts, and I cannot put the men out cutting off the pipes, and it is dangerous business, and I argued if I could get a small bid for which the company will discontinue the pipe at the main, we will leave the service in at the street, and my men will go and remove the lamp posts.

Q. Why did you leave the service pipe in the street; what do you want it there? A. We don't want it there.

Q. Why don't you make the gas company remove it? A. I will, if I can.

Q. Don't you think you can? A. No, sir, I don't think so. They are funny franchises. The franchises have expired and there are immensely interesting questions of law attaching to the cases. Now, one other point and I have finished. A very interesting point, I have been charged with inserting in the 1916 contract a fraudulent clause, and that is exactly the language used. The clause is, " The engineer and his inspectors shall at all times have access to all places of manufacture where materials are being made for use under this contract," etc. It has been stated that was put in to embarrass the Public Service Lighting Company, and I will tell you how that came in. During the course of last summer, I

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undertook with the aid of the Corporation Counsel to redraft our greatest contract, the contract for the laying of water mains, and I ran across substantially this clause there, which is a very usual one in city contracts, and a proper one, and there is nothing unusual about it, and I began redrawing all the electric lighting contracts, and finding we omitted that last year, we put it there.

Q. You barred these people from bidding for the 1916 contract? A. I rejected their bid, yes, sir, for the reason given.

Q You would not let them bid anyway? A. No, sir.

Q. You really want us to think that these people ought to take it in good part, after knowing the capital that would be required for a year's contract, after being limited to five months, do you think they ought to take it in good part and have been friendly about it, and do you think because they got unfriendly, they should be forever barred from making any more competition to this Welsbach Street Lighting Company in this community, do you think that is right? A. It is the law.

Q. I wish you would point it out, and I will draw a law to repeal it as soon as I get to Albany. A. All right. It is section 419 of the charter.

Q. It is those things that prevent you from ever getting any cheaper rates in a city of this kind. A. I think it is 419.

Q. You write me a letter about it, and we will repeal that. A. All right. It is section 419 of the charter, Mr. Senator. I will read five lines into the record:

> "No bid shall be accepted from or contract awarded to any person who is in arrears to the city of New York by debt or contract, or who is a defaulter as surety or otherwise upon any obligations of the city."

That is the section.

Q. That is the section under which you are operating here? A. That is the section under which the Corporation Counsel drew the notice of abandonment. I did not draw it.

Q. Who looked that up? A. Mr. Hardy.

Q. What about the candle power of these lights; does any question ever come up about that? A. The candle power of the new lights, do you mean?

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Q. Of the old ones, or of all of them; is there a standard, in the first place? A. The standard is — are you talking about gas lamps?

Q. Yes, sir. A. We have not had very much trouble with the candle power of the gas lamps. The standard is 50 candle power.

Q. How long have you been Commissioner? A. Twenty months. I am holding up — I have refused to pay many of the bills of the gas companies because our tests showed they were not furnishing 22-candle power lights, that is, in reference to public buildings.

Q. That is the same company? A. Yes, sir.

Q. They did not keep their contract with the city, did they? A. I held as to that they did not, and I am trying to punish them.

Q. You did not disbar them from bidding again on a future bid, and they violated the section of the charter you have called attention to? A. I should take issue with you. They did not abandon any contract.

Q. Why, didn't they violate their contract, if they didn't furnish the candle power required? A. I don't know. You have raised a point that I never thought of before, but remember I am retaining twenty per cent. of the bills of every single month where there is a violation of the candle power.

Q. When you do finally pay it, you pay it with interest, if they ultimately get it, don't you? A. I don't see why. I can't do more, anyway. There are lots of things I would like to do if I had the power and time.

Q. You are satisfied that the gas company, while it was obligated to furnish 22 candle power, did not furnish it? A. In some instances.

Q. Within a year? A. In some instances; they are pretty nearly doing it now in all instances. The present status is this, that as a result of insisting upon the execution of that feature of the law, I have very materially improved the quality of the gas furnished in Greater New York.

Q. Who had charge of the tests on that? A. Mr. Birdsley, and he is here. He is chief gas examiner. I have raised the issue

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with the Kings County Lighting Company whether or not they are entitled to receive more than 75 cents for their gas, and we are retaining a lot of money and owing them, pending a decision on that point.

Q. Did you ever report that to the Public Service Commission? A. I don't know whether I did or did not. It is in the hands of the Corporation Counsel. I don't know. I really couldn't say whether I did or did not. I probably did, because their engineer came over to see me about the possibility — about our tests of gas, and their tests, and I am sure I told him, at any rate, at that time, about it, but I may not have formally reported it to any member of the Commission.

Q. There is a good deal of difficulty in arriving at the fact whether or not they had kept up to the required candle power, wasn't there, as to any of them? A. No, sir, I don't think there is any extreme difficulty in saying now almost all of them are keeping up to their candle power.

Q. Since what time? A. For about a year.

Q. Before that? A. Perhaps for six or seven or eight months, I don't know. Our records will show when tests began to improve. I took a personal interest in this thing and got busy with it in November, 1914. It was not until about the next April or May that conditions materially improved, and they did materially improve because I would not pay the bills, and I have not paid them yet.

Q. There was a considerable trouble in trying to arrive at the fact as to whether the standard was being violated, before you came in, wasn't there? A. I cannot speak about what happened before I came in.

Q. You don't know anything about that? A. I don't know very much about it.

Q. I have understood that some of the men who were employed to test these things were discharged, and so on, and had some difficulties about it, but I want to assure you whatever there is brought out here in reference to making these companies comply with their standards is entirely commendatory to you, and the Committee want to commend you? A. Thank you very much.

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I cannot get too much commendation, but I am not trying to do things for commendation. We make daily tests, and we make the best tests we can with the material at our disposal, and I have informed the proper authorities we have not adequate facilities, and I have so written in our annual report, a copy of which is at your disposal, and I think the gas law ought to be amended so as to get away from any possible relations it may still have to the decision — to the certain decision in the 80 cent gas case, which has taken away some of the penalties that the law says can be imposed. That is a deep legal question, and just how the new law ought to be drawn I do not know, but it is my opinion the law ought to be revised to contain a reasonable penalty the Supreme Court will not upset, under which we can get quick action against any company that is recalcitrant.

Q. We will be glad to recommend such a law as that, if you will submit it? A. Very well.

Senator Foley.— Do you think there is anything in the proposition of transferring the electric light companies to your department from the Public Service Commission and authority as to fixing prices?

Mr. Williams.—We are not a rate making body, except as to the private water companies. We have lowered a rate to a private water company, and it is a very trying and difficult proceeding, and we are wil'ing to do it if we are given the facilities, but we haven't the facilities for doing rate making.

By Chairman Thompson:

Q. You say you have gone through a case and made a rate? A. Yes, sir.

Q. How long have you been in office? A. Twenty months.

Q. And you have made a rate? A. Yes, sir.

Q. I would like to have you send a copy of it to the First District and Second District Public Service Commission? A. Very well. I have reduced the gross earnings of the company by $8,000 per annum, and I want to tell you further it was so right they had to accept it, and they did accept it. It is one of the most trying pieces of work can be put up to a public body, and the

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investigation had to be very exhaustive. In regard to the electric light rate, when I came into office and wrote the New York Edison Company in June, 1914, a letter, which I have here and can show you, that I was not satisfied their wholesale rates for Manhattan were as low as they might be, the net result was I got a two cent rate on three hundred thousand kw. installation, and got it retroactive to January 1st, and saved $30,000 in electric bills on that one point.

Q. What did you pay kw? A. The maximum city rate is 2c. below the maximum rate to private consumers. It is 6c. now, and it used to be 6½c. and they furnished free lamps. I am talking about this borough. The maximum rate is 10c. and we get it at 6c. It used to be 6½, and they furnished the free lamps to the public buildings. That looked very nice on its face, but I changed that and found there were too many gem lamps in, and they have a carbon filament instead of a tungsten filament, and we made a wide departure in the contract. I prepared specifications and said no more free lamps, and you take off half a cent, and that is how we got from 6½ to 6c. per kw, and put in the best of lamps, and we must have saved throughout Greater New York as the result of that elimination of the gem lamps over a hundred and fifty thousand dollars.

Q. You cut the percentage used down, and how much was it cut down? A. We did a lot of things, and we sent out notices of warning to everybody they must cease wasting current, and made ourselves disagreeable to a lot of people, and cut out useless installation, with a result we are lighting public buildings at $300,000 less a year than in 1914, although the buildings have increased in number and if you have any influence with the board of education you can help us very much by backing us up in helping us to prevent waste of electric light at night time.

Q. Has that Kings County Lighting case raised a question as to the amount they should receive from the city, has that been decided? A. No, sir. I can send you a copy of my letters. They are in the hands of the corporation counsel. I would like to tell you, and you will be interested in one thing. There is one more electric contract we make. This department has charge of the high pressure fire service below 34th street, and you never

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saw a fire engine in use below 34th street, because we will send a stream of water to the fourteenth story. We have two stations, one at Gansevoort street, and the other at the Brooklyn bridge. The alarm is sounded which goes to the Edison Company and to us, and within a minute and a half we can furnish a pressure of three hundred pounds to the square inch at every big hydrant below 34th street. To-day that high pressure fire service is costing only 50 per cent of what it cost two years ago. We have to pay a stand-by charge, a charge in return for the readiness of the company to furnish the current if it is demanded, and we have cut those charges in half.

Q. How many gas lamps did you let for 1916? A. 1,600, and we expect to get them out by June.

Q. You are going to substitute electrics for all of them? A. Yes, sir.

Chairman Thompson.— Are there any other questions you want to ask the Commissioner?

By Mr. Smith:

Q. Mr. Williams, in this extract from the opinion of Judge Cohalan, with which you sustained your position in regard to that injunction matter, have you noticed there in the middle of the paragraph there are some stars, so-called, indicating an elimination? A. Yes, sir. Is there any mistake?

Q. No, but will you read from the record itself what you have eliminated by the stars? A. "In the opposing papers it appears from the affidavit of Commissioner Williams that the Welsbach Street Lighting Company of America have submitted no bills for services rendered during the year 1915."

Q. Is that a correct statement of fact? A. That got in by mistake, and it is corrected by an affidavit in the record.

Q. This is part of the opinion of Judge Cohalan, and he bases his opinion upon that fact, among other things? A. I should say not. It is entirely immaterial, and he overlooked it, and what happened was the bills were submitted, but they have not been audited, O. K.'d, or paid, and that is the fact. Judge Cohalan overlooked the fact I had contradicted that in a subsequent affidavit.

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Q. You had made an affidavit upon which that statement could be based? A. I made a mistake and corrected it afterwards.

Q. The opinion is in part based upon the statement of fact no bills were rendered? A. That is in the opinion, but I don't think the opinion is based upon that.

Q. Why did you star it out of your extract, so particularly? A. Because it was based on an erroneous conception. I don't remember, this extract was made some time ago, and it was based upon an erroneous conception of the record. It is not the only extract starred out that is made.

Q. Where is there another one? A. There are half a dozen of them.

Q. Let me substitute a complete copy of the opinion, instead of that? A. I will be very glad to.

Q. The sixteen or twenty-two hundred arc lamps on which the 1916 contract was awarded, was practically the same number of lamps which the lighting corporation was expected to install after September 16, 1915? A. It is a lesser number.

Q. How much less? A. Five or six hundred less, isn't it? It is nearly a thousand less.

Q. What did the 1916 specification call for in quantity? A. 2,301. That included fire alarm lamps. The 1916 contract calls for 1,700 lamps.

Q. And that was 2,300, the 1915? A. I think so. I will look and see. You will see they run out by the summer. There is the list on the fourth bidding. It is not an easy matter for us to get up just those figures. We were making the changes as fast as we could, and we couldn't do it just according to that schedule, but we followed it out pretty nearly.

Q. What I am getting at is, after September 16, 1915, you expected the lighting corporation to install for a period of practically three months of service some two thousand lamps at a proportionate rate, based on 93 cents; when the award was made by the Commissioner on September 16, 1915, the award at that date to the Service Corporation meant that they must for three months of service install approximately two thousand lamps, based on their bid of 93 cents?

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Mr. Ackin.— The acceptance was made in July, and the contract it takes some two or three weeks to execute on account of the bond and the approval of it by the comptroller and return to the department for signature, and the various steps.

Chairman Thompson.— It is getting awfully late, and there cannot one counsel and three witnesses answer at one time. This question is a perfectly simple one. What he is trying to tell you is the company when they got ready to go to it, they only had 2,300 lamps involved?

Mr. Williams.— Yes, sir.

Chairman Thompson.— And for about three months?

Mr. Williams.— Yes, sir.

By Mr. Smith:

Q. And three months to serve? A. Yes, sir.

Q. And immediately thereafter, or shortly thereafter, the 1916 specification was issued, and as a result of that issuance there was a bid from this company of still 95 cents, with $1.25 from the Welsbach Street Lighting Company? A. Well, it is partly true.

Q. It is all true, up to that point, isn't it? A. I don't think it is. It depends on how you look at it.

Q. Didn't this company bid on the 1916 contract 95 cents? A. It did not, it bid 95 cents with a qualification.

By Chairman Thompson:

Q. What was the qualification? A. I will read it: "95 cents for the above; where the lamps are so located that one lamp-lighter cannot care for 90 lamps within the schedule time for lighting lamps, the price per lamp per month to be the price reached by dividing the lamp-lighter's wages, $34 per month, by the total number of lamps on his route, and adding the difference between this sum per lamp and the sum of 38 cents per lamp to the price of 95 per lamp per month. Said lamp routes where there are less than ninety lamps, to be made up by the chief engineer of the department of water supply, etc., of lamps with ruby or green globes or domes, 15 cents per lamp per month to be added to the above price."

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Q. Did you figure out how much excess that meant? A. It is a very difficult thing to figure out, but it did not become necessary to figure it, as the corporation counsel would not allow me to accept the bid at all, for the reasons appearing in the section of the charter which I quoted.

By Mr. Smith:

Q. Because of what appearing in the section of the charter, what fact in that quotation?

Chairman Thompson.— Because they claimed they defaulted on another contract.

Q. Is that the fact? A. Yes, sir, that is the reason.

Chairman Thompson.— You did not go into that to figure out what that difference was?

Mr. Williams.— No, sir, but it would make a material difference.

Q. Would it raise it to a dollar and a quarter? A. Mr. Ackin says he thinks it will.

Q. Do you know of any reason why the protecting clause was put into the 1916 specification? A. Yes, sir, I suppose because we are cutting out the lamps so fast we don't want them any more. There cannot be very much money left in this contract; it was dwindling.

Chairman Thompson.— Was there any such clause in the Welsbach Street Lighting Company contract?

Mr. Williams.— No, sir. Let me call your attention to something you saw a few nights ago. So anxious are we to get out the Welsbach mantles that you look at the ruby fire alarm lamps at the corners, and there is one advantage to those lamps, they make it respectable to be in the red-light district. You will find them burning with open-flame gas burners, and they are the only lamps on the streets of New York or any large city you will find burning with the open-flame burners, and it is cheaper, in view of the higher cost of Welsbach contract, to let them burn in the open-flame burner.

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Chairman Thompson.— Have you said all you care to, Mr. Williams?

Mr. Williams.— Yes, sir.

Mr. Momand.— The Commissioner has brought in a subject that I did not touch on in my first statement and that is in regard to the substitution of electric lights for gas lamps, and the Commissioner has made a statement that it will amount to a great saving for the city of New York. We have mapped the entire borough of the city, of Manhattan, block to block, and noted the gas lamps in service and the electric lights substituted for the gas lamps, and in the papers of the taxpayer's suit of December 21st, and these papers are embodied in that suit, and the Commissioner has not answered them yet. I put five or six blocks at random throughout the city, and the first is on 48th street between Fifth and Sixth avenues, and the relative cost of gas and electricity in that block not counting lights on Fifth or Sixth avenues, there were seven gas lamps in that block, four on the north side of the street and three on the south side, and those seven gas lamps cost the city of New York $22.37, $156.59 for that block. Those seven gas lamps were removed and three 300-watt electric lights costing $70 a year each, making a total cost of $210 for that block. That makes a yearly increase to the city of New York of $53.41. That alone is merely for the cost of those three electric lights, the cost over the seven gas lamps. Here is what it cost to make that change. "Removing seven gas lamp posts, $4.50, $31.50. Of course those seven gas lamp posts originally cost the city of New York about ten dollars apiece, $70. They are a total loss to the city of New York, and makes a total loss to the city, $154.91 to the city of New York for that one block." Here is example number 2, 95th street, Amsterdam avenue and Columbus avenue. In that case there were two gas lamps on the north side of the street and three on the south side of the street. The cost of installing three 200-watt lamps which the Commissioner has referred to as being installed low cost maintenance. There were five gas lamps removed, cost the city $22.37 each per year, $111.85 a year; installed three 200-watt electric lamps costing $45 a year, $135, increase $23.50 for lighting that one block. Here is what

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it cost to make that change. The city of New York three electric light poles, the city furnishes the poles for all electric lamps of 200 watts and below and the electric light company furnish for 300 watts and above; three electric poles, $17.72 each. The cost of three poles is $53.16. Removing five gas lamp posts at $4.50 each and $10 cost, $72.50, a total of $125.66, making the total cost to the city the first year of change for that one block $148.81. Example number 3, 73d street between Columbus avenue and Amsterdam avenue. This is exactly the same as example number 2. The total loss to the city, first year $148.81. Now here is example number 4, off in another section of the city, Lexington avenue between 90th street and 91st street. There were three gas lamps removed and two electric lights substituted in their place. The three gas lamps removed cost the city $67.11 a year, and the two 300-watt electric lights installed in their place at $70 each cost the city $140 a year. Yearly increase in cost $72.89 for that one block. That is a condition extending along the entire length of Lexington avenue practically. The cost of making that change removing three gas lamp posts $4.50, $13.50. Three gas lamp posts $10, a dead loss to the city, $30, makes $43.50; cost of making that change, total loss to the city, $116.39 on that one block, and that applies to the entire length practically of Lexington avenue. Number 5, which is very favorable, most favorable figures that we have in our investigations, and most favorable to the Commission. That is 67th street between Lexington and Third avenues. In that block there were four gas lamps removed and two electric lights installed in their place. Those four gas lamps cost the city $89.48 a year. Two 200-watt electric lights cost the city $90 a year.

Chairman Thompson.— Make your comparison on five gas lamps and two electric lights.

Mr. Momand.— These are the facts existing throughout the city.

Chairman Thompson.— You mean Mr. Williams has misstated the proposition?

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Mr. Momand.— He has put in two electric lights for five gas lights. I haven't found them. I want to show this is the most favorable case to the Commission. It only shows a yearly increase in cost of 52 cents, and that is on 67th street between Lexington and Third avenues. There were four gas lamps removed and two electric lights put in. These are 200 watt lamps only.

Chairman Thompson.— Is Mr. Momand right about that?

Mr. Williams.— I say two things, first of all, the lamps, electric lights, replacing cost, two of them $86.00 and not $90. Secondly, it is fundamentally wrong to charge for the whole original cost of the posts good for twenty-five years to the first year.

Chairman Thompson.— He says that at that particular point which he names with definiteness on 67th street and between Lexington avenue and Third avenue, that you have taken out only four gas lamps instead of five, and substituted two electric lamps?

Mr. Williams.— Yes, sir, that may be. That is counteracted by other places where we have taken out seven gas lamps and put in two. You can pick out isolated places in this city which would show all kinds of things. The first comment to make on Mr. Momand's criticism, if what he says is true, I could not be lighting all the streets for $240,000 less than a year ago. He says we have two 300-watt lamps at 48th street, and he is wrong.

Mr. Momand.— I changed that to 49th street.

Chairman Thompson.— Where is one of the places where you have seven lights, and we will put that up to him?

Mr. Williams.— Those 49th street lights were installed more than two years ago, before I became Commissioner, and before the 200-watt lamps came in. I did not do it.

Assemblyman Feinberg.— How much of this saving do you ascribe to the new kind of lamp for the gem lamp?

Mr. Williams.— The gem lamp comes in only in public buildings.

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Assemblyman Feinberg.— Was it ever used in public lighting at all?

Mr. Williams.—Only in public buildings, and not on the streets. We have saved probably a hundred thousand dollars by tearing out the gem lamps. This Lexington avenue instance. That is to be a great big thoroughfare. We are not putting 200-watt lamps there, and are putting 300-watt lamps there.

Assemblyman Feinberg.—Was there any saving by reason of taking out the arc lights and putting in the others?

Mr. Williams.— Yes, sir, a very great saving, a $200,000 saving by that, and you have a better light, and New York city is paying for its 400-watt lamp less today than Philadelphia or Boston or Albany is paying for the corresponding light, which I do not say is as good.

Chairman Thompson.— How much in dollars?

Mr. Williams.— We are paying $75.80 a year for the 400-watt nitrogen lamp. That is lower than last year by $1.20.

Assemblyman Feinberg.—When was this discovery made?

Chairman Thompson.— You send us the place where they took out seven and put in two.

Mr. Williams.— I will send you one where we took out twelve and put in two.

Assemblyman Feinberg.— When was the discovery made that the gem lamps were wasteful of current?

Mr. Williams.— November of 1914, by my engineer, who sits here, and we lost no time in taking them out.

Senator Foley.—Where did you take out twelve and put in three?

Mr. Williams.— Up in the Bronx.

Mr. Momand.— I want to make a statement that it is a fact that the substitution of electricity for gas has been done at an enormous increase in cost to the city of New York, and the saving

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has been made in the old arc being supplanted by the nitrogen lamp, and that is a so-called half-watt lamp. The 200-watt lamp is supposed to give 400 candle power, but it only gives about 300.

Mr. Aitken.— 200-watt lamp is supposed to give 250 watts and nothing more.

Mr. Momand.— It is not as good as I thought of, then. Mr. Chairman, I would like to explain there is a great difference in the cost of the maintaining of these nitrogen lamps as compared with the old arc light. The old arc electric company had to have men go and constantly trim and put in new carbons to the light, and that was quite an expense, and the new lamp they only visit them to remove the bulb that has burned out and destroyed, and screw a new bulb in, as you would in your house, and the cost of current has been reduced by fifty per cent., and the city of New York has nothing like the reduction in the price of the nitrogen lamps that it should have. It should be forty to fifty dollars, at the top notch.

Mr. Lewis.— I suggest if there is anything further to be said, it be put in the form of a brief and submitted.

Chairman Thompson.— If there is anything further along this line to be submitted to the Committee, it will be taken up Thursday next. This is only interesting to the Committee in view of whether or not we should recommend in this law any manner of supervision or regulation in the letting of the contracts. I understand Commissioner Williams has been interrogated upon that point, and his opinion is in the record, and there is only one more question, and that is whether the Commissioner opposes regulation in the abstract of water companies. Do you think water companies ought to be regulated?

Mr. Williams.— Yes, sir, but I think New York city ought to be allowed to regulate its own private water companies within its midst.

Chairman Thompson — Why is New York city different from any other city?

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Mr. Williams.— Because eighty-five per cent. of the water is municipal water, and the city will gradually acquire the water companies.

Chairman Thompson.— Do you think it is a correct principle to require a company to be regulated and supervised and permit it to be regulated and supervised by its competitor?

Mr. Williams.—Well, I haven't thought on that subject very much. I would rather talk that over with you some other time. It is a very large question. I had to go to Albany a year ago and had the Maier bill vetoed, and I got it vetoed.

Mr. Lewis.— Are you proud of it?

Mr. Williams.— Yes, sir, very.

Mr. Lewis.— Do you know there are people in the up-State districts today are paying a dollar a thousand cubic feet for water, which is 75 per cent. of it in excess of what they ought to pay, which is the result of your securing the veto of the Maier bill?

Mr. Williams.— I was looking out for the interests of New York city, and I maintain it would have been a colossal outrage for Governor Glynn to put his pen to it. I was looking after New York city.

Chairman Thompson.— On the proposition of the regulation of the water companies, you do not think it is a bad thing to have the water companies regulated?

Mr. Williams.— No, sir, I don't. I have power to regulate them here, and I think I am regulating them very fairly.

Chairman Thompson.— You are operating the city system, too, which is in competition with the private fellows, and don't you think that is a little hard upon them?

Mr. Williams.— As you put it, maybe, yes. I would be very much interested if you would read my report. It is not Sunday reading, or a novel reading, but may I send you a copy of it? That is law today. The Commissioner of Water Supply, Gas and Electricity is probably the only official in the State of New York

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who has the sole power to prescribe the rates at which private water companies shall furnish water, and that is only within the limits of the city of New York, and you will think it has worked well in this case.

Chairman Thompson.— We will be glad to have your report, and will be glad to determine any question we can upon this proposition, and if you desire to submit any briefs, we will be glad to have you.

Mr. Greene.— Commissioner, have you a copy of the letter submitted by each of the bidders at the 1914 contracts, and which made the bids conditional, and for which reason he rejected them?

Mr. Williams.— I haven't them here.

Mr. Greene.— I heard those bids read, and they were not conditional; there was a clause and there was a statement they did not wish this bid to be taken as a precedent for any future bids; it was in no sense a condition precedent.

Mr. Williams.— The Corporation Counsel and Assistant Corporation Counsel told me it was conditional. But what is the point? This was a tax-payer's suit, to prevent waste, and by rejecting the bids, they got what they wanted.

Mr. Greene.— The Commissioner has not assigned the true reason for rejecting the bids.

Mr. Williams.— I did not say that was the only reason.

Chairman Thompson.— The tax-payers sometimes have other reasons, and I presume this tax-payer did, too.

Mr. Greene.— He was an officer of the corporation.

Mr. Williams.— I presume he wanted something else. I am open to suggestions from anyone.

Mr. Greene.— I object to the explanation on the ground there was any conditional bid, because, to my personal knowledge, there was not.

Mr. Williams.— To my personal knowledge, there was.

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Chairman Thompson.— We will not take up this matter any further now, and we will take it up next Thursday if there is anything to be submitted further on it.

We will adjourn until 11 o'clock tomorrow morning, and there will be no testimony taken at that time. We will adjourn the hearings for the purpose of taking further testimony to next Thursday morning, January 13, 1916, at 11 o'clock.

Whereupon, at 5:30 o'clock P. M., an adjournment was taken to 11 o'clock A. M., January 8, 1916, at the same place.

JANUARY 8, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City.

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Quorum present.

There being no business to come before the Committee at this time, upon motion, an adjournment was taken to Thursday, January 13, 1916, 11 o'clock, at the same place.

JANUARY 13, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City.

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Quorum present.

Chairman Thompson.— The Committee will come to order, please.

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HERBERT L. CARPENTER, being recalled for further examination, testified as follows:

Examination by Mr. Lewis:

Q. Were you ever sworn as a witness before this Committee, Mr. Carpenter? A. Yes, sir.

Q. You appeared before this Committee at an earlier date in connection with the proposed third-tracking of the Broadway Fulton lines in Brooklyn, did you not? A. Yes, sir.

Q. Will you tell the Committee what has happened in connection with that matter to the litigation that was pending at the time of the former hearing before the Committee? A. At the time of the former hearing the litigation was in the Supreme Court, and the testimony was being heard before Referee Judge Brown, testimony upon the various issues brought up in the action of the railroad company to condemn easements of abutting property owners. The railroad company continued the reference for a long drawn out period, until over two thousand pages of testimony were accumulated with about a thousand exhibits, and although the property owners had expended thousands of dollars up to that time, they were unable to meet the demands of counsel to complete their briefs and legal issues before the referee.

Q. Will you give the name of your counsel? A. The counsel was Davies, Auerbach & Cornell, and Arnon L. Squires. The counsel withdrew after the testimony was all in, but before briefs were written, which left the property owners without an adequate brief to present to the referee.

Chairman Thompson.— Why did they withdraw?

Mr. Carpenter.— Lack of funds.

Q. Will you tell us the circumstances and what there was about that demand for payment of fees? A. The counsel demanded a large amount of money, which I believe they were entitled to, because the railroad company had carried this litigation through to a very great and lengthy extent. We have great confidence in our counsel, but they were expensive, and we were unprepared to meet their demands, and it was necessary to employ outside counsel to

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draft this brief, after simply a casual inspection of the two thousand pages of testimony.

Q. Was there a stipulation extending the time for the referee to make and file his decision? A. The referee, to my best knowledge and belief, and as advised by our counsel, asked until January 1st to render his decision.

Q. Was that granted? A. That was granted. On or about the 9th of December, very suddenly, the referee rendered his decision, which was sweepingly in favor of the railroad company.

Q. Had the briefs been filed by your counsel at that time? A. Yes, sir, after just two or three days of preparation, and unfortunately did not include any reference to the most important issues in the litigation, such as misrepresentation of consents.

Q. Was that brief prepared by outside counsel as a result of the refusal of your counsel of record to make a brief? A. It was.

Q. And it was because of your inability to pay the amount demanded by your counsel? A. Yes, sir, it was.

Chairman Thompson.— How much did your counsel demand?

Mr. Carpenter.— Ten thousand dollars.

Chairman Thompson.— Had you ever paid him anything before that?

Mr. Carpenter.— Yes, sir.

Chairman Thompson.— How much?

Mr. Carpenter.— About three thousand dollars.

Chairman Thompson.— And they wanted ten thousand dollars more?

Mr. Carpenter.— Yes, sir.

Chairman Thompson.— Well, didn't they give you time enough to pay it, or anything like that?

Mr. Carpenter.—We offered then three thousand dollars more.

Chairman Thompson.— What did they say to that?

Mr. Carpenter.— Unsatisfactory.

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Chairman Thompson.—When did they want the ten thousand dollars?

Mr. Carpenter.— Five thousand dollars immediately, and the assurance of the balance within a reasonable period.

Chairman Thompson.— They wanted the assurance immediately they would get the balance within a reasonable period?

Mr. Carpenter.— Yes, sir.

Chairman Thompson.— And they wanted an assurance sufficient to know you guaranteed ten thousand dollars that day?

Mr. Carpenter.— Before they would write the brief.

Chairman Thompson.— And they wanted five thousand dollars in cash?

Mr. Carpenter.— Yes, sir.

Chairman Thompson.— And a present guarantee of five thousand dollars more to be paid in the future?

Mr. Carpenter.— Yes, sir.

Chairman Thompson.— And all you had was three thousand dollars?

Mr. Carpenter.— Yes, sir.

Chairman Thompson.— And they refused to take it?

Mr. Carpenter.— Yes, sir.

Chairman Thompson.— And they withdrew from the case?

Mr. Carpenter.— Yes, sir.

By Mr. Lewis:

Q. After the decision was rendered, what happened? A. After the decision was rendered, on or about December 8th the railroad company on the following day communicated with the — on or about the following day, communicated with the Public Service Commission, and asking them for the immediate approval of plans of construction of the solid girder viaduct, which the property

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owners were trying to prevent. The railroad company stated in their communication, a copy of which I could procure or can be procured from the Public Service Commission, stated that they had an option which would expire within the next few days, and that their failure to exercise that option of the purchase of steel would incur a loss of about forty thousand dollars. A large delegation of citizens and property owners from Brooklyn were successful in getting the Public Service Commission to refuse the approval of these plans until they had further considered the matter. On the 6th of January, and as we believe, after great pressure by the railroad company, particularly certain of the departments of the Commission, the Commission passed a resolution authorizing the railroad company to take advantage of their option on steel.

Q. Will you tell us which departments you have in mind that exerted the pressure? A. I believe that from the attitude of Mr. Turner of the engineering department and Mr. Whitney the secretary of the Commission in apparently opposing any action by property owners which was derogatory or against the railroad company's desire to approve these plans, I believe that their force has materially influenced the action of the Commission, particularly in view of the new Commissioners, who in the short period of time they have been in office could not as thoroughly grasp the importance of this matter. On January 6th the resolution passed by the Commission tentatively authorized the railroad company, the New York Municipal Railway Corporation, to buy steel of a solid girder type construction, from Nostrand avenue to Cumberland street, but provided that they must use the lattice type of construction from Cumberland street to Adams street. This was obviously a direct discrimination dividing as it did one section of a given line.

Q. Have you an opinion as to the motive, if any, which actuated that action — which resulted in that action? A. We believe that the railroad company has actually ordered considerable of this steel for that structure, and that they are determined, if possible, to get the original plans approved, at least as far as the steel now ordered would cover.

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Chairman Thompson.— You made certain statements in the other room in reference to the secretary; I wish you would put that on the record.

Mr. Carpenter.— In order to restrain the Commission from approving these plans for the construction of the solid girder structure between Nostrand avenue and Cumberland street, and after obtaining knowledge that the Commission or their engineers intended to approve these plans, on the morning of the 13th of January, we obtained an order of injunction and to show cause, signed by Justice Stephen Callahan, last evening, restraining the Public Service Commission and their agents, employees, etc., from approving these plans, the same order being returnable in Brooklyn Supreme Court on the 14th of January. I personally went to the Commission with one of our counsel and served a copy of the papers on Commissioner George V. S. Williams, who accepted same without comment. I then had Mr. Whitney, the Secretary of the Commission, called into the Commissioner's office and I asked him what was the proper method of serving papers of this kind on the Commission, and Mr. Whitney promptly stated that he was not the people's counsel. I then asked him if he deliberately refused to advise property owners and their representatives what was the proper method of serving the Commission, and he said yes, he refused, and Mr. Whitney then left the room, although he received the service of the papers. We then served a copy of the papers on Chairman Strauss who accepted them without adverse comment, and agreed that service on the Chairman and Secretary would be considered as adequate service.

Chairman Thompson.— You made certain statements in reference to past matters, in reference to Secretary Whitney; state what they are.

Mr. Carpenter.— Secretary Whitney has throughout this entire fight to protect the property owners' rights on Fulton street against the railroad company's desire to build this permanent structure at the city's expense for themselves has taken the attitude of opposing me and many of those associated with me from almost every standpoint.

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Chairman Thompson.— I think you made certain specific statements.

Mr. Carpenter.—Certain of my associates have communicated as the result of organization resolutions to the Commission or to the Secretary of the Commission, asking that certain important matters be referred to the Commission, and upon visits to Mr. Whitney he has stated, as I believe, on good authority, and can produce witnesses to testify, that he was thoroughly conversant with the attitude of the Commission and would not present the facts before them.

Chairman Thompson.— You make the charge that certain matters were brought to his attention, the Secretary of the Commission, by property owners of Brooklyn, and he refused to present them to the Commission?

Mr. Carpenter.— Yes, sir. Furthermore it is a matter of public record that when our counsel before the transit committee of the board of estimate made a plea that the issues in this important case be passed upon by the corporation counsel, the opposing individuals before the transit committee were Mr. George Yeomans, the chief counsel of the B. R. T., and Mr. Whitney, the Secretary of the Commission, who stood together and conferred, and both opposed permitting the corporation counsel to render a decision as to the legal rights of the board of estimate in behalf of the city.

By Mr. Lewis:

Q. What they really opposed was any request on the part of the Commission to the corporation counsel for an opinion, was it not? A. Yes, sir; and they opposed any action by the board of estimate requesting the corporation counsel to render a decision in this matter.

Q. You appeared this morning at the office of the Public Service Commission in a representative capacity? A. Yes, sir.

Q. Will you tell us what organization you represented? A. I am president of the Fulton Street Protective League and chairman of the Fulton Street Property Owners.

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Q. And you were there as the representative of those organizations, were you? A. Yes, sir.

Q. Do you know whether the steel to be used on the solid construction was ordered prior to the resolution of January 6th? A. I don't know, but I think it would be most desirable to obtain from the chief engineer of the American Bridge Company, the chief engineer of the New York Municipal Railway Company, and the assistant chief engineer of the Public Service Commission full information as to the time when the steel for the Fulton street structure was ordered and at what prices.

Assemblyman Burr.— When you served Commissioner Williams, he made some comment when he took the papers, did he not?

Mr. Carpenter.— Concerning the papers?

Assemblyman Burr.— Concerning the proceedings.

Mr. Carpenter.— Mr. Williams made a statement to me in which he said he had tried to influence the Commission to improve the type of structure between Nostrand avenue and downtown, and that he also had used his best efforts to bring about the physical connection between Fulton street and the subway.

Assemblyman Burr.— He said that when you served him with the papers?

Mr. Carpenter.— Yes, sir.

Assemblyman Burr.— Did he say he was glad you were bringing the proceedings, or anything of that kind?

Mr. Carpenter.— He did not positively then.

Chairman Thompson.— I understood you to say the Commissioner said it might help them, and might be a good thing, because you had made the objection.

Mr. Carpenter.— In the conversation between Commissioner Williams and myself, the question was discussed of giving the legal department of the Commission an opportunity to go into court and determine the merits of this case, which they have never done before.

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Assemblyman Burr.— So that the people in Brooklyn might be satisfied?

Mr. Carpenter.— Yes, sir, or know whether the legal department were going to protect the interests of the railroad company or the interests of the property owners.

Chairman Thompson.— I understood you to say in the other room, Commissioner Williams said to you in substance it was a good thing you had done this to relieve the Commission and get the thing before the courts?

Mr. Carpenter.— I did not mean to give the impression he made that statement, although I do not believe he objected to it, and do believe that he feels it will be a desirable move both in the Commission and before the people.

Chairman Thompson.— In view of the statement, which is rather a serious charge, in relation to the administration of the Secretary's office of the Public Service Commission, I ask counsel what his idea is as to whether this committee ought to send for Mr. Whitney, in order to give him an opportunity to make a statement in reference to it?

Mr. Lewis.— I think it would be a very proper thing to do.

By Mr. Lewis:

Q. At this time, you say Mr. Whitney and some one else appeared before the board of estimate, was that a public meeting of the board? A. Yes, sir.

Q. When was it held? A. I cannot tell you the exact date, but about June 28, 1915.

Q. When was the action brought, the issues in which were referred to Judge Brown as referee? A. About, I think, April 30th, the latter part of April, 1915.

Q. Do you recall who was present at that meeting of the board of estimate, at which Mr. Whitney appeared in opposition? A. Well, there were a large number of property owners, and the members of the Committee present were Mr. Matthewson of the Bronx, who was the one member insisting that the Corporation Counsel review this matter. There was Mr. Pounds of Brooklyn, and Mr. McAneny.

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Q. What action was taken by the Rapid Transit Committee? A. The matter was left for Mr. McAneny to communicate with the Corporation Counsel, and for the counsel of the property owners to submit briefs to the Corporation Counsel.

Q. And did the Corporation Counsel ever render an opinion upon it? A. Yes, sir, absolutely reversing the claims of the Board of Estimate, and substantiating the claims of the property owners.

Q. And contrary to the advice of Mr. Whitney? A. Contrary to the advice of Mr. Whitney.

Q. Did Turner have any part in that? A. Mr. Turner, as I remember it, if not upon this particular occasion, upon several other occasions, took the same attitude as Mr. Whitney.

Q. In reference to the same matter? A. Yes, sir.

Q. And at any public hearings? A. Yes, sir.

Q. Do you recall what hearings? A. I think at this same hearing on June 28th, although I will not be sure.

Q. Do you realize the effect of the statements which you have made here to-day, in reference to the administration of Mr. Whitney and Mr. Turner? A. I hope that the effect will be to change their attitude.

Q. I know, but do you realize that the charges which you are making on the record at this time are of a serious character against these men? A. Do you consider them charges, or statements of fact?

Q. We won't characterize them. Whatever they are, do you regard them as serious? A. I do regard them as serious.

Q. And does the attitude of Mr. Whitney indicate to your mind a lack of loyalty to the people under whose jurisdiction he is employed? A. To my best knowledge and belief, yes.

Q. And does it indicate to you a purpose on his part to serve the New York Municipal Railways rather than the people who maintain the office of Public Service Commission, and maintain him as Secretary of that Commission? A. I should say that, from my careful observation, the indications are that the interests of the railroad company you refer to have been materially favored by both the gentlemen mentioned.

Q. Mr. Turner and Mr. Whitney? A. Yes, sir, to my best knowledge and belief. I believe they have been materially favored,

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and the property owners have been avoided and deliberately prevented from having their issues thoroughly scrutinized and passed upon, by reason of the attitude taken by these two men.

Q. And you think their attitude is contrary to the public interest, do you? A. From my observation, and in connection with this particular matter, I believe it has been.

Q. What is Mr. Turner's first name? A. Mr.— I don't know Mr. Turner's first name.

Q. What is his official position? A. Assistant chief engineer of the Public Service Commission, and I believe he is known as the construction engineer, although he seems to pass upon all matters of transit construction. I might mention this, if you care to, in the record, that the most needed improvement in Brooklyn in the matter of transit, is the connection of this Fulton street elevated with the great subway systems, and that engineers of unquestioned standing, Commissioner Williams and others, have said that it was a vital and important connection in the interests of Brooklyn, and that Mr. Turner has deliberately opposed and endeavored to show in every way that this connection should not be established, and that his contention has been exactly the same as the contention of Mr. Timothy L. Williams of the B. R. T.

Senator Lawson.— Tell us why, if you know, that is to the best interests of the railroad, not to connect up the Kings County L with the subway.

Mr. Carpenter.— This is a very important matter. The dual contracts which have been entered into between the city and the B. R. T. interests create Fulton street elevated as a city-participating line, and under the terms of the contract, the railroad company is little interested either in the cost of construction of this line or its profits, but they are vitally interested in the fan of service lines which converge through central Brooklyn into Fulton street, and which are direct competitors to the Fulton street line.

Q. What lines are they? A. DeKalb avenue, Green and Gates, the Putnam and Halsey, and Fulton and Bergen street lines.

Q. Does the city participate in their earnings? A. No, sir. The connection of the Fulton street elevated line with the subway would create a city-participating competitor to these surface lines.

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Chairman Thompson.— Commissioner Wood will appear before the Committee to-morrow morning. We will suspend now until 3 o'clock.

Whereupon, at 1:30 o'clock P. M., a recess was taken to 3 o'clock P. M.

AFTERNOON SESSION

Senator Towner presiding.

Senator Towner.— The Committee will come to order.

TRAVIS H. WHITNEY, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Whitney, Mr. Carpenter, representing various civic organizations of Brooklyn, has testified this morning; have you acquainted youself with the nature of his testimony? A. The stenographer read it to me.

Q. Is there any statement you desire to make upon the subject? A. In the first place, Senator, I would like to have a copy of that testimony, so that I can take it up possibly to-morrow, with your permission, in detail. However, there are certain things that I can speak of now.

Q. You may proceed. A. In the first place, to take up the freshest thing that I believe he testified to, I mean by that the most recent, the matter of service of papers this morning. Commissioner Williams called me into his room this morning, and Mr. Carpenter was in there, and we talked about the elevated situation for a few moments, and I left the room, going into the next room, with the door open, where I talked over a matter of a proposed motion to be made before the Commission with Ashley T. Cole and Mr. Goldmark, the private secretary of the Chairman. While I was talking to them, Commissioner Williams came out of his room and towards me with a bundle of papers in his hand. He said Mr. Carpenter had just served the papers on him, and turning them over to me, and wanted to know if that was sufficient

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service, and I said, "I am not the one to determine what is proper service. That is a thing an attorney must settle for himself, as a matter of fact we have never raised technical objection in any proceeding on the character of service, and it very frequently happens papers are served upon a single Commissioner, but I cannot advise as to what is proper service."

Q. Did you use the expression, "I am not attorney or counsel for the people?" A. I did not. Mr. Carpenter turned and I don't know whether he went back into Commissioner Williams' room, or stayed there while the young man with him, who told me he was the lawyer in the matter, discussed with me the matter of service, and I pointed out that was determined by the Code or particular statute, which was a thing he would have to settle, but it frequently happened papers were served upon the Chairman or a single Commissioner or Secretary, and we never raised technical objection as to service, but we could not foreclose our right to any defense that there might be, but it had never been raised, and we never admitted service. It is not true, as I gather from listening to that testimony, that I was called into the room where he asked me this question. As a matter of fact, I was in there, and had left, and after I had left he served the papers on Commissioner Williams before anything was said to me on the subject, and Commissioner Williams had the papers and turned them over to me and I handed them back to Mr. Williams.

Q. Did Mr. Carpenter ask you whether that was sufficient service? A. He either asked it or Commissioner Williams asked it for him.

Q. What is your best recollection on the subject? A. My recollection is Commissioner Williams asked the question, and I want to suggest in connection with the matter as to what the exact facts were, that Commissioner Williams, Mr. Goldmark, and Ashley T. Cole be called as witnesses, and they were all in the room, and service at that time had been had on Commissioner Williams, and I understand afterwards an imperfect copy of the same papers was served on the Chairman, and I consider it no more my function to advise an attorney for a party to litigation that the service was not in accordance with the Code than to point out that the

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papers in the action do not even allege that the plaintiff is a taxpayer. Those papers are returnable tomorrow morning, and that will be brought to the attention of the court.

Q. You have seen the papers and know the contents? A. I have glanced them over and talked with the counsel to the Commission.

Q. You understand they contain a request for a restraining order, to restrain the Public Service Commission from the approval of the proposed plans for Fulton street? A. Yes, sir.

Q. And when were the plans approved? A. I should say five or six weeks ago.

Q. And the injunction is ineffective, is it? A. In so far as it attempts to restrain the approval of the plans.

Q. Did you call Mr. Carpenter's attention, or the attention of the counsel to that fact? A. I didn't know that was in there at the time. There was nothing on the calendar of the Commission which was to meet at eleven o'clock, and this was a half an hour or so before, and there was nothing on the calendar in respect to this matter.

Q. When the papers were served upon Commissioner Williams and handed to you, were you ignorant of the nature of the papers? A. Absolutely.

Q. Was there anything said by Mr. Carpenter or his counsel as to the character of the papers or purpose of the restraining order? A. I assumed they did relate to the Fulton street matter, because they have been talking from time to time about attempting to get orders to show cause.

Q. Did you call that fact to the attention of Mr. Carpenter, that the approval had been granted several days ago? A. Five or six weeks ago, I said.

Q. It was not granted before the determination of the action, was it? A. I will have to explain a little in detail in reference to that. The company submitted some time ago the steel plans for construction work, plans on which they had obtained bids from various steel companies for work, very extensive work, on the Coney Island terminal, on the East New York terminal and yard and on the Fulton street reconstruction. The Commission adopted

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a resolution approving of those plans with three conditions in the resolution. One, certain changes be made in respect to Coney Island terminal, and one in relation to the East New York yard, the details of which I do not remember now, and third, and I do not remember whether this is the order of the conditions, but third, that the order for the steel could not be placed with the steel company for the Fulton street erection, without further action of the Commission. While the Commission approved the plans, they were not able to actually give the order to the steel company for the steel without further action of the Commission. The Commission last week took that action by allowing them to exercise the option they had on steel which would expire on the 15th of January, by agreeing to a stipulation by which if we succeeded in working out a substitute subway route, instead of the elevated on Fulton street, by the time they reached Cumberland street, that the company would accept that substitute subway route in the place of constructing the Fulton street elevated west of Cumberland street, and it was stated it would take about six months for that situation to be reached, and if construction proceeded west of Cumberland street upon the falling down of the subway proposition, it could be only done by lattice girders.

Q. What was the precise date of that substitute resolution, if you have any recollection of it? A. Last Thursday.

Q. The original resolution, several weeks ago? A. I don't remember the date of it.

Q. Was it immediately after the application was presented by the company? A. No, sir, there was a period of time for the examination and detail of the plans.

Q. What was the length of that period? Have you any recollection of that? A. I should say three or four weeks.

Q. As much as that? A. Yes, sir.

Q. The determination of Judge Brown was not rendered until the 7th of December, was it? A. About that time.

Q. The application of the company was made the next day after the decision of Judge Brown? A. They sent a letter urging action by the commission on these plans.

Q. And that letter was sent the day after Judge Brown's decision? A. A day or two after.

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Q. And you say there were three or four weeks of delay from the time that letter was received? A. No, sir. The plans themselves had been submitted previously to that.

Q. They were submitted last summer, were they not? A. Some time ago.

Q. They had been submitted at the time this Committee held a session at the Public Service Commission, had they not, at the time Judge McCall was on the stand and explained, as long ago as last August? A. No, sir.

Q. September? A. No, sir.

Q. Had not the plans been submitted at that time? A. Not the detailed steel plans.

Q. A general plan had been? A. No, sir. Of course the lay-out is a thing settled several years but the steel plans did not come in until — the steel plans on Coney Island work and East New York work have been in over two months. The plans on Fulton street from Nostrand avenue to Adams street have been in a longer time than that.

Q. That is on the part we are interested in, is it not? A. Yes, sir.

Chairman Thompson presiding.

Q. Would you say that those plans were filed as long ago as September? A. I think possibly the Fulton street plans have.

Q. May they not have been filed as long ago as August? A. Yes, sir, I think the Fulton street may have been in at that time.

Q. It is my recollection they actually had been submitted at the time Judge McCall gave us the benefit of his views on the subject. A. Now that I think back on the matter, they have been in much longer than that, because the Commission held a hearing on the re-location of stations as indicated by those plans, but any of the actions of the Commission in respect to those plans still left the question open for final action until the action of last week.

Q. What action; what was the first action taken by the Public Service Commission after the decision by Judge Brown? A. The action of last week.

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Q. And that action was simply to approve the purchase of the steel for this construction and take advantage of the option which would expire January 15th? A. And proceed with the construction under two conditions. One, that if substitute subway route could be worked out, and secondly, if they did have to proceed west of Cumberland street, upon the failure of a substitute route, it must be by lattice-work construction.

Q. What inspired the action last week; was there any hearing or argument or suggestion from anyone that there be action upon that question last week? A. Yes, sir.

Q. From whom? A. Right following the Brown decision, the company sent in a letter calling attention to the situation with respect to the option on steel, and the rapid advance in the price of steel, and urging action in respect of the Fulton street matter, and that matter came on before the Commission, and there were two lengthy hearings before the Commission in respect to the matter, and attended very largely by people from Brooklyn, with some ten or fifteen speakers, or more than that, on each occasion, particularly representative of the Committee of One Hundred of Brooklyn.

Q. Who represented the Committee of One Hundred? A. Mr. Shaw was there as Chairman, and Mr. Wilcox as their counsel, and various members. Mr. Cranford was an engineer, and took up the engineering features of it.

Q. Were they all there in opposition to taking action by the Commission as requested by the company? A. Their attitude, at least in considerable part, was an affirmative action. They were suggesting a total change in lay-out of things, to have a different treatment of transportation in Brooklyn. It was not a question of whether the reconstruction of Fulton street should be approved or disapproved. They were offering something in substitution.

Q. And their something in substitution, according to their claim, would give better transit facilities for a section of Brooklyn, would it not? A. It certainly would.

Q. According to their claim? A. And let me say, in connection with that, this, possibly it is due to so small a matter as my living in Brooklyn, nevertheless during a considerable period of

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time I have been one of those most anxious to secure a re-treatment of that transportation situation in Brooklyn, and if you call the people who have been most active in that, you will find that I am one of those who is responsible for the formation of the Committee of One Hundred. While during the negotiations, the representatives of the Board of Estimate and the Commission spent a great deal of time and worked out very thoroughly the financial and legal phases of those contracts, I believe that there was not the adequate consideration given to the physical lay-out of Brooklyn, and a very great deal might possibly be done in the direction of correcting that, and personally I have been very much in sympathy with the attitude of the Committee of One Hundred, and I have aided them where I properly could do so, and have had conference after conference with their representatives in endeavoring to work out some substitution for the dual system, and I have spoken several times in reference to that.

Chairman Thompson.— Have you a copy of that petition?

Mr. Whitney.— No, sir.

Mr. Carpenter.— I have a copy.

(Mr. Carpenter hands papers to Chairman Thompson.)

Q. The construction of the third-tracking as planned and approved by the Public Service Commission effectively prevents a change in the dual contract such as you have argued for, does it not? A. No, sir. There is still a possibility. On that very thing, as far as I could, I suppose I am partly responsible for the fact that there is still an opening in respect to the action of the Commission for the working out of something.

Q. You know of the desires of the associations represented by Mr. Carpenter, do you not, what their views are upon that subject? A. Yes, sir.

Q. Isn't it true that their claim is that the lay-out as at present established, operates to the great advantage of the surface lines of the Brooklyn Rapid Transit Company, and isn't it true that it is claimed that that lay-out will not furnish as good facilities for the traveling public as the adoption by the Commission of the plan

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suggested by the organizations represented by Mr. Carpenter? A. Well, there are two or three propositions involved in that question.

Q. You are perfectly familiar with it all; answer one proposition at a time and give us your view. A. I do not know exactly what is meant by the proposition, the present lay-out operates to the advantage of the surface lines. I think that is a conclusion that may or may not be true, and I do not think is necessarily an important conclusion, and without in any way offering a criticism of the work that was done in the formation of the dual contracts, it is perfectly true, as I said several times publicly, that the lay-out in the dual contract does not give the central part of Brooklyn advantages of through operation up into Manhattan that is secured for other parts of Brooklyn, or that that part of Brooklyn is entitled to. The facts, however, are, that contract No. 4 and the certificates of the B. R. T. give the company legal rights to go ahead along those lines, and in considerable extent it is impossible to make any change in that situation without the consent of the company. There are advantages that the company wants to secure, and I have been one of those that have felt it might be possible that in view there are certain advantages they want to get to secure their consent to a change in the matter of the Fulton street elevated.

Q. It is their plan to make connection of the surface lines with the subway that will lead into Manhattan, is it not? A. No, sir; there is no such possibility as that. They would have to change from surface cars to the subways.

Q. But they would make connections where they would transfer from surface lines to the subway; isn't that the plan the organizations have urged? A. Surface cars?

Q. Yes. A. No. Where surface lines cross the subways or go under elevated stations it would be possible to change and pay an additional fare.

Q. Additional fare or be transferred? A. No transfers from surface to the others.

Q. Hasn't it been urged that there should be? A. That has not been a part of this proposition.

Q. It has not been? A. No, sir.

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Q. Have you anything further to suggest on the subject of Mr. Carpenter's testimony this morning? A. He testified something with respect to the meeting of the Board of Estimate. The only occasion I can recall where I appeared at the Board of Estimate was where the Committee of One Hundred had had some phase of the matter up with Mr. McAneny's committee, and the next day they had a conference with Judge McCall, at which the general question in respect to the attitude of the Commission and Board of Estimate on this matter was up in respect to delay for the purpose of having legal questions settled, and they wanted to know what the attitude of the Commission would be, and Judge McCall stated the attitude of the Commission would be along a certain line, and there was to be a meeting of the Board of Estimate the next day, and he directed me to go to that meeting of the Board of Estimate, which I did. Mr. Shaw, the chairman of the Committee of One Hundred, made a statement of the general situation and undertook to state what Judge McCall's attitude was, and Mr. McAneny, from the bench, asked me whether that was correct or not, and I corrected it, to a certain extent. He speaks of Mr. Yeomans and myself being in conference. While I was there, Mr. Yeomans did get up and speak to me and urged me to say something or other with respect to this matter, with respect to the litigation then under way, and I told him I was not arguing his case and to attend to his own matters, and the conference consisted of that.

Q. Did you recommend that no application be made to the Corporation Counsel for an opinion? A. No, sir, I was not there representing the Commission generally. It is not always a co-operative conference, if you happen to see two men talking together, and it wasn't in the case of Mr. Yeomans and I talking together.

Chairman Thompson.— Was that the meeting on the 28th of June, 1915, of which you are talking?

Mr. Whitney.— About that time.

Chairman Thompson.— One of those affidavits says in that respect that, "The Board of Estimate has asked to have certain legal points referred to the Corporation Counsel."

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Mr. Whitney.— Which it did do.

Chairman Thompson.— And said, "The citizens and owners on whose behalf this request was made were opposed by the attorneys for the New York Municipal Railroad Corporation and by you, and that you both argued there was no merits in the points raised by Mr. Squire."

Mr. Whitney.— I did not do anything of the kind. I have not any doubt you can get from the stenographer of the Board of Estimate what was said.

Chairman Thompson.— Was there a stenographic record of that meeting?

Mr. Whitney —They have a stenographer who takes everything, but my impression is they are not actually written out, but he has the notes.

Chairman Thompson.— You would suggest that we better get those notes?

Mr. Whitney.— Yes, sir. I certainly would.

Chairman Thompson.— He goes on and says, "The Committee, over the protest of the attorneys and over the protest of the representative of the Public Service Commission did refer it to the Corporation Counsel."

Mr. Whitney.— I was not authorized to appear before the Board of Estimate for the purpose of opposing sending it to the Corporation Counsel, and I did not appear there for that purpose.

By Mr. Lewis:

Q. Was there a stenographic record made of that meeting? A. My understanding is that they have a stenographer.

Q. Can you tell us when the steel was ordered for the plate girder elevated on Fulton street west of Nostrand avenue? A. If the order has been given it has been since last Thursday.

Q. Do you know anything about the price at which it was to be ordered? A. I think the option that they had was $46 a ton.

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Chairman Thompson.— When did they get that option?

Mr. Whitney.— Several months ago. The price now is $12 or more.

Chairman Thompson.— If peace was declared it would be less than $36, wouldn't it?

Mr. Whitney.— I don't know.

Chairman Thompson.— These prices during a year have a habit of going up and sometimes they get back; taking an average during the year they run about the same, don't they?

Mr. Whitney.— They have been going up for some time. About a year and a half ago we got the lowest price we have been able to get on steel. On one elevated contract we got a price of $48. That, however, is a price for the steel erected in place and painted, and it is not the mill price.

Q. Are there any plans before the Public Service Commission relating to the third-tracking on Fulton street from Nostrand avenue — west of Nostrand avenue, that have yet to be approved? A. I would not be absolutely sure about that, Senator. The detail plans have been approved. Whether it is necessary for them, if they have additional plans, the exact steel plans, for approval, I cannot answer offhand.

Q. Are there any plans on file in the office of the Secretary awaiting consideration by the Commission which require the approval of the Commission before becoming effective? A. No, sir.

Q. Are there any plans there that have not yet been approved by the chief engineer of the Commission? A. No, sir.

Q. Is there anything to prevent the immediate consideration — any action on the part of the Commission necessary before the consideration of the third-tracking west of Nostrand avenue can commence? A. There is nothing to prevent the company from exercising its option with respect to the steel west of Nostrand avenue. Whether they have still to make the detailed plans for each piece of steel I do not know. Those plans are made by the steel mills.

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Q. They would not require, when made, approval by the Commission? A. No, sir. They are working out in detail of the plans already approved. Those plans are made by the steel mills to show where the rivets go and so forth.

Q. There is nothing before the Commission that was to have received action this morning? A. The only thing before the Commission this morning was a letter from the B. R. T., written as the result of the resolution of the Commission last week calling attention to the fact that that condition requiring latticed girders west of Cumberland street if the proposition of a substitute subway fell down would increase the cost about ten dollars a ton and would amount to a 90,000 dollar additional increase in the cost of that work from Cumberland street westward, and asking that the Commission consider that question of whether at least some of those girders might not be plate girders, and the Commission authorized the reply to the company it insisted upon the lattice girders, both transverse and cross girders.

Q. Was any action taken this morning in reference to the Fulton street third-tracking? A. Only that.

Q. And that was not formal board action, was it? A. Yes, sir. The only effect of the action this morning was the Commission meant what it said last week when it said if there was any construction west of Cumberland street it must be lattice work construction.

Q. A reiteration of the order of last week? A. Yes, sir.

Q. It is your understanding the injunction served this morning is utterly ineffective for any purpose? A. I cannot say that.

Q. If there was no action pending this morning and none pending now? A. My opinion is there was nothing before the Commission awaiting action on which that temporary injunction is effective.

Q. Did you tell Mr. Carpenter this morning in Mr. Williams' office that — did Mr. Carpenter this morning in Mr. Williams' office ask you in words or substance as follows: "You absolutely refuse to say whther this service upon Commissioner Williams is good service?"; did he ask you that question? A. He did in the outside hall, something like that.

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Q. And did you say, "I do refuse"? A. Yes, sir, but explained both to him and to his attorney.

Q. And did you follow that refusal up with an explanation? A. Yes, sir.

Q. Right then and there? A. Yes, sir.

Q. And will you give us your brief explanation for the record in connection with that? A. As I did early in my testimony, that I explained to his attorney that the question of what was proper service for an attorney to make in respect of a matter there was a matter the attorney must determine for himself, that we did not admit service, and that, on the other hand, there had been numerous cases where they had served the Chairman or a Commissioner or the Secretary of the Commission, and we had never raised any technical point in respect to service of papers on us, taking the matter always on its merits, and without regard to a technical point as to who was served.

Q. Have you taken that position usually? A. Yes, sir, every time.

Q. With other attorneys in other matters? A. Yes, sir. It very frequentlly happens that an attorney will come in, a subpoena-server come in, with a subpoena, and want to know what the fee is, and I say, "That is a matter for you to determine, and you leave whatever you think is a proper fee." The fees, incidentally, are turned into the city treasury.

Chairman Thompson.— Now, what do you say about the fact the B. R. T. are trying to erect a structure to run a freight line over it?

Mr. Whitney.— No, sir.

By Chairman Thompson:

Q. You think they are not? A. No, sir.

Q. After they have got this thing through, what do you say as to their legal right to carry freight on these structures unrestricted? A. The Railroad Law gives to the railroads, a street railroad corporation, the right to operate their roads for the purpose of carrying passengers and property. It is a uniform provision of the Railroad Law, and every street railway franchise in the city

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of New York has a provision in it allowing the company to carry persons and property.

Q. And isn't that the real reason behind this heavy construction over there, isn't that the real reason they want to make it strong enough to carry heavy freight? A. No, sir.

Q. Don't you think so? A. No, sir. That structure, you must bear this in mind, Senator, that they are now operating on that line light wooden cars, and the cars for operation on that line are large cars, almost twice the length, 68 feet long, and a foot wider, ten feet wide instead of nine feet wide, and very much larger cars, and there are to be three tracks, the middle track is to be used alternately in the morning for service westward, and in the evening for service eastward. That throws a stress on an elevated structure in the morning going westward of all local trains on the outside track, and your express trains on the middle track. In the evening the stress is thrown on the south side of the structure, and makes it necessary to have your member relatively heavier than even with a four-track line, because then your stress would be uniform.

Q. You have heard it suggested before that is what they are trying to do, haven't you? A. I have noticed by the newspapers somebody has stated that.

Q. Do you think it is a good idea to allow them to carry freight around the streets of Brooklyn, from the standpoint of property owners and the people living there? A. What I think is the lines, the Rapid transit lines, should be used, and they are built primarily for passenger transportation, and should be used for passenger transportation to the exclusion of everything else, that is to say that there must be adequate and proper passenger service. There has been a good many organizations that have advocated for the purpose of clearing the streets of heavy vehicular traffic, have advocated the use of the elevated lines for the use of carrying freight in the early hours.

Q. You would be in favor of the use for carrying freight, if possible, after serving the people? A. No, sir.

Q. Couldn't the Public Service Commission have put a clause in their approval which would have prevented their being used for freight, as a condition of their approval of the applications, they

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could have cleared that situation at most any time, couldn't they? A. There are provisions in the contract require the lines to be used for passenger service primarily.

Q. They could have made the conditions? A. If there was any question about that, they could have been put in, certainly.

Q. Another affidavit says — Mr. Kornder says he is president of the Fulton Street Anti-Third Track Association, and he says that on or about January 22, 1915, he sent to the Public Service Commission a letter and that subsequently to that letter, he went to the office of the Public Service Commission and saw you, Travis H. Whitney, Secretary, and he says he stated to you that he had previously sent the letter above referred to to the Commission and you thereupon advised him the letter had been received, but that you, Mr. Whitney, had not presented the letter to the Public Service Commission, for the reason that the views of the Public Service Commission were well known to you, and you knew it would be useless to present the letter to them, and for that reason you failed to present the letter; what do you say to that? A. That is not true.

Q. You did not state that, or that in substance? A. No, sir. There have been various communications from two or three organizations in Brooklyn that have come in, and those petitions and communications, at least the formal ones, have been brought to the attention of the Commission, and they have had those matters before them.

Q. Do you remember that letter mentioned? A. No, sir, I don't remember the specific letter.

Q. Will you state whether or not that was ever presented to the Public Service Commission? A. I cannot say offhand. I denied the statement he quoted me as saying.

Q. He says you stated you did not care to present anything further to the Commission in regard to the matter discussed in his letter. A. I do not recall anything of that kind. What is the approximate date of that?

Q. He said he sent the letter the 22d of January, 1915, and subsequent to the letter he called on you and had this talk, and he don't say when, but subsequent to that date. A. 1915?

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Q. Yes, almost a year ago, and the letter was evidently dated January 22d, according to this affidavit, and his name in Kornder. A. I cannot recall that this third-tracking matter was up before the Commission as early as that.

Q. Those things appear in those affidavits, and I think you have a copy of them, and you can look them up, and if you desire to state anything, you can come and make any statement you wish. A. I should like to have a copy of the testimony of Mr. Carpenter, and I would like to have Colonel Hayward and two or three others who are familiar with my attitude called as witnesses.

Chairman Thompson.— The stenographer is directed to furnish Mr. Whitney with a copy of the testimony desired, and delivered to him to-night, wherever desired.

There is such a thing in the State as the Republican party, and the members are going to congregate in New York city to-morrow, and that is the reason Senator Lewis has to go and make room for them to meet this afternoon, and we will all be interested in the meeting to-morrow, and we will not meet to-morrow until 3 o'clock in the afternoon. We will now suspend until 3 o'clock to-morrow afternoon.

Whereupon, at 4:20 o'clock P. M., an adjournment was duly taken to 3 o'clock P. M., Friday, January 14, 1916.

JANUARY 14, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order, pursuant to adjournment, at 3 o'clock P. M., Chairman Thompson presiding.

Chairman Thompson.— The Committee will come to order.

Mr. Lewis.— I understand Mr. Whitney desires to make an additional statement.

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TRAVIS H. WHITNEY, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Whitney, I understand you desire to make some statements to supplement your testimony of yesterday? A. Yes, sir. In the first place, I want to ask whether Mr. Carpenter appeared yesterday voluntarily or under subpoena?

Chairman Thompson.— He came in the other room voluntarily, and got to talking, and the Chair ordered him to come before the Committee, and whether there was an actual subpoena issued or not, I do not know, but it was compulsory.

Mr. Whitney.— May I ask the Chairman of the Committee if he will ask Mr. Carpenter if he will voluntarily sign his testimony?

Chairman Thompson.— It is not necessary.

Mr. Whitney.— The reason for my request is that it may become a written statement of his, by his signature.

Chairman Thompson.— It is written, and a part of the proceedings of the Committee, and I do not know why we should make any different rule as regards Mr. Carpenter than anybody else.

Mr. Whitney.— For the purpose of assuring me of any possible rights I may have in reference to his statement.

Chairman Thompson.— The Chair assures you of that; that is the law.

Mr. Whitney.— In reference to the statement he made that Mr. Kornder had sent a statement to me that had not been brought to the notice of the Commission, I have looked up the fact and find that Mr. Kornder was notified of the hearing before the Commission in response to his petition, dealing with the third track on Fulton street, the 3d of April, and he appeared at that time and made his statements, along with a considerable number of other men. I have attempted to look up the matter of the meeting of the Board of Estimate which was testified to be on the 28th of

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June, and there was none on that date. There was one on the 25th of June, at which a more or less kindred subject was before the Board of Estimate, namely, a formal request from the Public Service Commission for immediate action by the Board of Estimate, if they would appropriate money for the re-location of the tracks in Adams street, the Commission stating it desired an immediate decision in order to complete the plans at Fulton street. I appeared at that meeting of the Board of Estimate by direction of the Commission, merely to state the Commission did not see its way clear to withdraw the request for immediate action, leaving to them the responsibility for failure to act resulting in additional cost in the making of the plans under Fulton street. They did not act, and as a result, the plans had to be made which resulted in a cost of twenty-five to fifty thousand dollars additional to the subway work, I did not make a statement in reference to any other matter, and did not appear in support of anything Mr. Yeomans was there to urge, and on the contrary I refused to say anything when he spoke to me, and the fact anyone saw the two of us when we spoke together was no indication we were in agreement, but quite to the contrary. I do not want to burden this Committee with any unnecessary details. There are two phases of Mr. Carpenter's testimony I think may be worth while taking up, and that is the question of what did take place just after he served papers on Commissioner Williams. There were a number of persons in the room, Commissioner Williams, Mr. Goldmark, and Mr. McKinney, and two or three others, and the three I have named are here and can testify to what the conversation was, and he made statements in reference to my attitude on the subject of the elevated situation in Brooklyn, and Mr. Shaw, the Chairman of the Committee of One Hundred, which has been particularly working out this subject, and Mr. Cranford, a prominent member of that committee, and the engineering adviser to it, are both here, and they are ready to make statements in reference to their knowledge of what my attitude on this subject has been, if you wish to take them up.

Chairman Thompson.— You want those gentlemen's statements taken, do you?

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Mr. Whitney.— Yes, sir.

Chairman Thompson.— All right. We will take them.

MR. ROBERT A. SHAW took the stand.

Chairman Thompson.— Do you wish to be sworn?

Mr. Shaw.— It does not make any difference with me.

Chairman Thompson.— We have not asked you to come before the Committee, and for that reason, I do not like to subject you to it, unless you want it. What do you say, Mr. Whitney?

Mr. Whitney.— Perhaps it would be just as well.

ROBERT A. SHAW, being first duly sworn, testified as follows:

By Mr. Lewis:

Q. Make your statement, just as you choose. A. I am here voluntarily, on my own motion, after having read in the afternoon papers of yesterday and the morning papers of today, some of the testimony that was presented here yesterday by Mr. Carpenter, and since coming into the room I have had the opportunity of looking over the official or stenographic testimony on the same subject which was given here. My relation to the subject is this: I am chairman of a committee known as the Committee of One Hundred, which has something like 130 Brooklyn men on its membership, representing all parts of the borough and different activities in the borough. As chairman of that committee, I am working for substantially the same thing as Mr. Carpenter is working for. We have been jointly interested in eliminating the elevated railroads from the central part of the borough and securing simultaneously an improvement in the transit service there, by bringing a population of three-quarters of a million in contact with the dual tubes, who will not be served by the dual tubes, unless some connection is made at Fulton street and Ashland place.

Chairman Thompson.— You say substantially the same purpose; why do you use the word "substantially?"

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Mr. Shaw.— The Committee of One Hundred stands irrevocably opposed to the elevated railroads, the presence of the elevated railroads in the central part of Brooklyn, or spending a cent of money in perpetuating those roads.

By Chairman Thompson:

Q. Mr. Carpenter stands for that, too, don't he? A. He can answer for that himself.

Q. I wondered if there was any difference between the position you take and the position Mr. Carpenter takes. A. Perhaps the difference is this: We oppose a lattice-work structure as well as a solid girder structure. We oppose any form of structure down Fulton street, the re-building, and want the removal as soon as possible of what is there, and therefore, we are not participants in any efforts to induce the authorities to yield a lattice-work structure. We oppose both types. We stand together in demanding a connection at Ashland place, so as to serve this district. As to the testimony which Mr. Carpenter has given, in which it is implied that Secretary Whitney and Mr. Turner have been loyal to the railroad company as distinguished from loyal to the city, I feel in the first place that Mr. Carpenter has been misled by his failure to distinguish between official duties which men in those positions are required to carry out, and their own feelings. So far as my observation goes, and it has been an observation covering a year and a half of contact with the Commission and with those gentlemen, there is no justification whatsoever in such a charge.

Q. What do you mean by distinguished between his official duties and his inclinations as a citizen; do you mean to say what he did, he did officially and not as a private citizen, or what; what do you mean the Committee to take from that? A. I am trying to put a reasonable construction on Mr. Carpenter's attitude, which I do not understand.

Q. Do you understand Mr. Whitney's attitude; that is the one we want to know about. A. Mr. Whitney's attitude of denying any such sympathy with the railroad company, so far as I can see, is borne out by everything I know of his action officially or unofficially.

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Q. We are not going to try Mr. Carpenter; he is not holding any official position, but if the Secretary of a Public Service Commission took it upon himself to suppress records or to prevent the communication directed to the Commissioners coming to the notice of the Commissioners, that we would be interested to know; personally I like Mr. Whitney, but I have official duties to perform here, and it having come up as it has, in justice to him, we want to hear all there is about it, and we are not interested in arriving at a conclusion in reference to Mr. Carpenter. A. I would suggest along those lines that you should perhaps, then, ask for records of Mr. Whitney from the Commission, if you want to know what his relations are as Secretary to the Commission.

Q. We are hearing you because he has produced you; if you know good things about Mr. Whitney, tell them to us; we can stand that, in contradiction of the man's statement. A. I am telling you that Mr. Whitney's attitude toward the Committee which has been advocating the same thing substantially as Mr. Carpenter, has been the reverse of what Mr. Carpenter has so reported here yesterday, so far as my observation goes.

By Mr. Lewis:

Q. That is as far as you care to go with the matter, is it? A. I will answer any questions you wish to put to me in connection with the matter.

By Chairman Thompson:

Q. Have you any information on the particular fact which appeared in the testimony yesterday, the fact sworn to by the affidavit-makers — I can't remember the names — have you any information regarding the facts testified to? A. Do you mean as Mr. Carpenter testified?

Q. About the letter received, and the statements made before the transit committee of the Board of Estimate, and about the conversation in the office of the Public Service Commission, those three facts, I remember, were testified to yesterday? A. I was not present at the Public Service Commission when Secretary Whitney was served.

Q. Were you at the meeting of the Board of Estimate transit

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committee in reference to the letter of January 18, 1915? A. What letter was that?

Q. A letter written by the gentleman who signed the affidavit, Kornder?

Mr. Whitney.— Kornder's letter had nothing to do with the meeting of the Board of Estimate.

Q. Kornder testified he wrote a letter some time in January, 1915, and after that time he appeared before a meeting of the transit committee of the Board of Estimate; that is my recollection. A. I am not familiar with any facts connected with that.

Mr. Whitney.— He may have had those things in his affidavit, but they were not related matters.

Chairman Thompson.— I had three facts in mind.

By Mr. Lewis:

Q. You were not present when the summons and complaint in the action was served in the office of the Commission upon Mr. Whitney yesterday? A. No, sir. My observation is that we as citizens get good service in this matter from the present Secretary of the Commission.

By Chairman Thompson:

Q. May I inquire your business? A. Merchant, and vice-president of the Casselli Color Company.

Q. Have you had any other relations with the Public Service Commission except as a member of the Committee of One Hundred? A. So far as I remember, no.

Q. As I understand it, you give the Secretary of the Commission a certificate of good character? A. From an observation of a year and a half, sir.

FREDERICK L. CRANFORD, being first duly sworn, testified as follows:

By Mr. Lewis:

Q. Will you tell us your business? A. I am a contractor.

Q. And what kind of work are you engaged in? A. At the present time, subway construction.

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Q. Will you tell us what contract in the subway construction you have had? A. Yes, sir, built the Brooklyn extension of the present Interborough subway, and in association with my brother, and the part of the Brooklyn loop, Center street subway, some years ago, and I am now at work on three different sections of the present subway.

Q. Which are they? A. Sections No. 1 and 1-A of route 5, and section 1 of route 48.

Q. One of those the Astor House contract? A. Yes, sir.

Q. Which one? A. No. 1-A of route 5.

By Chairman Thompson:

Q. That is where you started to build a tunnel and afterwards took a house down and made an open-work construction? A. The Astor House was removed after the work was started.

Q. You took the work based on the excavation through a tunnel? A. Yes, sir.

Q. And performed the work through an open cut? A. A small part of it that was to be built as a tunnel was built in an open excavation.

By Mr. Lewis:

Q. About what proportion was that? A. Possibly seventeen or eighteen per cent., that is seventeen or eighteen per cent. of the tunnel work proper. The tunnel work proper was somewhat less than, or possibly fifty per cent. of the old contract.

Q. About one-third of the entire contract, then? A. No; about — if those percentages are right, maybe 7½ per cent. of the work was changed in character.

By Chairman Thompson:

Q. The contract doubled in some way, from the time you took it until the time you performed it? A. No, sir.

Q. Wasn't it less than a million when you took it? A. No, sir, $980,000, according to the estimate of the engineer, and got to be a million and about $250,000.

By Mr. Lewis:

Q. You are still engaged in that construction, are you? A. Yes, sir.

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Q. Your relations to the Public Service Commission are pleasant, are they? A. Yes, sir.

Q. And with Mr. Whitney? A. They have been.

Q. Will you tell us what you have to suggest in connection with Mr. Whitney's attitude? A. Yes, sir. I accepted a membership on the Committee of One Hundred something over a year ago, and became one of the executive committee of that Committee of One Hundred, and have taken a very active interest in the Fulton street elevated situation and am quite familiar with the attitude — quite familiar with the work that has been done in connection therewith.

(Witness temporarily excused, in order to permit the calling of Commissioner Williams who was obliged to leave as soon as possible to attend a meeting of the Commission.)

GEORGE V. S. WILLIAMS, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Have you some statement you wish to make? A. Yes, sir; I have a statement I wish to make in connection with what happened at the time the order to show cause was served upon me yesterday. I was in my room, and Mr. Carpenter came in himself, and we had some general conversation and then he asked me if the contract had been approved, or if the plans had been approved for the third tracking of the Fulton street elevated, and I told him I thought the plans were approved but the order for the steel held up pending the decision of the Commission, and to make sure I called up Mr. Whitney and he told me the same thing, and Mr. Carpenter told me he was going to serve some papers, and he had an injunction from the Supreme Court, and I said, "Let me be sure about that," and he said his injunction was based on the proposition that those plans had not been approved, and I telephoned and asked Mr. Whitney to come in the room, and he came in and said that they had been approved, and I don't remember whether he said when or not. Then he had something else to do

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and left the room and was talking to gentlemen outside in the office where the Secretary sits, and I accepted service, not in writing, but I took the papers from the young lawyer who came in with Mr. Carpenter, and he wanted to know if the Chairman was in, and the Chairman I thought was not in at that time, and I think he was just coming in at the time, and I didn't know he had gotten in yet, and I found Mr. Whitney in the next room to the room where the Secretaries to the Commissioners sit, and I said to Mr. Whitney, "Mr. Carpenter has served this paper on me, and is that sufficient?" I don't think in the three or four years I have been there they have served papers on me, and I said, "Is that sufficient?" and he said, "We have never given admission of service" but he said he didn't think there would be any question about it, or insinuated it, and Mr. Carpenter came out and he said to Whitney, "Do you decline to tell me how to serve papers?" and Mr. Whitney said, "Why, no," but, he said, "You have a lawyer to advise you what is the proper service," and with that, he walked away, and Carpenter said, "I will make use of that," and he repeated "You decline to tell me?" and Mr. Whitney, as I remember, didn't say anything, but walked away, and Mr. Carpenter and I went in the Chairman's room, and he served the paper on the Chairman and had a talk with him a few minutes. At no time did Mr. Whitney say he was not the people's counsel nor the people's keeper or anything of that sort, and he did not use any such expression. I want to say another thing that for over a year, as the last witness who just gave way for me knows, he and I and Mr. Whitney have talked over the possibility of running these Fulton street trains into the subway at Ashland place when the Fourth avenue subway was finished, or that part which goes under the Flatbush depot, St. Felix street rather, and I have been of the opinion the Fourth avenue has sufficient capacity, and I have heard Mr. Whitney argue in our meetings in favor of that connection right along, and also with the engineer who represented the Committee of One Hundred on the stand about it, too.

Chairman Thompson.— Does the Secretary, as a general rule, participate in your arguments?

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Mr. Williams.— Yes, sir, quite properly so, in Mr. Whitney's case, I think.

Chairman Thompson.—Why so, in his case?

Mr. Williams.— He has been there a long time and knows every matter that comes up intimately, and I think it would be a distinct loss to the community and to the Commission if they did not have the benefit of Mr. Whitney's advice, and I have never seen a man more efficient on detail or who could handle a great institution like that Public Service Commission is, with its now thousands of employees, in the way it should be handled in my opinion.

Chairman Thompson.— You think the Secretary should participate in the deliberations of the Commission?

Mr. Williams.— As far as getting the previous history, which is a great deal, you will find, from now on.

Chairman Thompson.— I suppose that those participations occur in informal or executive session?

Mr. Williams.— Some of them.

Chairman Thompson.— Do you think they ought to?

Mr. Williams.— Yes, sir.

Chairman Thompson.— Don't you think whatever advocacy the Secretary of the Commission might have before the Commission ought to be the same as that of everybody else, out in the open, so folks could see what position he takes?

Mr. Williams.—No. sir. I think if I asked Mr. Whitney what was the previous condition of this matter or that, I would not want to wait for a public meeting for it.

Chairman Thompson.— Of course the Secretary should keep minutes of the proceedings and files, and all of that, and you are getting beyond that; I was wondering whether the Secretary of the Commission ought to have an influence with the Commission in executive session where nobody else goes?

Mr. Williams.— I must say that I cannot see — I would not say the Commission took his recollection or his word for a matter

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to the exclusion of everybody else. I don't want to be misunderstood as to that.

Chairman Thompson.— You have advocated a privy counsel inside, and should that be so; should you have any executive sessions of the Public Service Commission, should there be any session where you transact business away from the ability of the public to be present?

Mr. Williams.— Commissioner Cram thinks not. We are divided on that.

Chairman Thompson.— What is your idea?

Mr. Williams.— My idea is it is of greatest importance we should have executive sessions, talking the matters over, and call a spade a spade, and size up people, those that are asking for things, and size up people opposing them.

Chairman Thompson.—Why not call a spade a spade before the public, or can't you afford to do that for fifteen thousand dollars a year?

Mr. Williams.— I don't know about that. Some people might be able to. If you were up there a while, you could see. If you were up there, you would see.

By Mr. Lewis:

Q. Let me ask you this question; are there any reports by the engineers of the Commission or by other engineers which have been made to the Public Service Commission, relating to the Brooklyn third-tracking, and which have not been made public? A. I don't know of any, I am sure.

Q. All reports on that subject by engineers have been made public, have they? A. If they have been filed, that makes them public, so that they can be seen by your Committee or anybody else interested that asks for them. I wouldn't want to say they have been published.

Q. Are there any such reports made by other subordinates than engineers? A. Yes, sir, there was a report very recently made by Mr. Whitney and Mr. Harkness.

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Q. On what subject? A. On the subject of this third-tracking.

Q. On what phases? A. To the legality of it, and what could be done. It was referred to them as a committee to see what could be done with the company in regard to this perpetual franchise matter.

Q. Just what was referred to them? A. To take up with the company the question of substituting their perpetual franchise on the Fulton street elevated track, for a limited franchise in a subway.

Q. In other words, the proposition was that the Secretary and the assistant counsel take up and negotiate if possible, an arrangement by which the company would surrender its unlimited franchise in exchange for a limited franchise to operate in the subway? A. Yes, sir, or find some way the subway could be built in place of the elevated from Cumberland street down.

Q. Is there a report from Mr. Whitney and Mr. Harkness in writing on that subject? A. Yes, sir.

Q. Has that report been filed in the records of the office or not? A. Yes, sir, it has been filed.

Q. Will you tell us what the recommendations were as made by the committee? A. I would rather the report would show for itself.

Q. Will you supply a copy of the report? A. Yes, sir, Mr. Whitney can send you a copy of the report.

Q. When was that report made, Commissioner? A. About the end of December.

Q. Has there been any action taken upon it? A. Yes, sir.

Q. What, if any, action? A. We did not go as far in our decision as the report of Mr. Whitney and Mr. Harkness suggested.

Q. What was the suggestion? A. The suggestion was to make it some way so as to force the company into — by a campaign, a long siege which might have been a long siege to force the company into taking a limited franchise into the subway and surrendering their perpetual franchise, and we were met by this argument by Mr. Harkness when he submitted that, and he admitted frankly this was a condition of releasing a portion of the mortgaged premises, and that any bondholder could come in and enjoin

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if they were getting anything less than they had on the Fulton street structure that was perpetual, on the theory of releasing part of the mortgaged premises without consent.

Q. They would substitute, wouldn't they? A. The company absolutely refused to take a substitution short of a perpetual franchise in the subway. Commissioner Hayward is of the opinion we should not give any perpetual franchises in any subway, and I am not so strong myself about that, because I feel that there is an existing nuisance, almost, in the elevated road, and the people, as far as the people are concerned, would be perfectly satisfied, and even delighted to get the elevated road off the street, even to the giving of a franchise in the subway in perpetuity.

Q. In other words, the elevated structure as it now exists is so great a nuisance the people would prefer to grant to the company which owns the franchise for that elevated structure a perpetual franchise in the subway? A. Yes, sir, especially the people on Fulton street and the Brooklyn people, but it would be against the policy of the State and the city, and it is a very grave question.

Q. How far did the Public Service Commission go in adopting the recommendations of Mr. Whitney and Mr. Harkness? A. The opinion written by Mr. Harkness shows that very clearly. We went as far as we thought we could, and it was unanimous the elevated should stop at Cumberland street, and for six months they should try to get some way devised whereby they could build a road from there on down and try and arrange for the substitution of something short of a perpetual franchise, and it seemed to be the opinion of the Commission that was the best we could do now, and I will confess I was anxious in this particular that it should stop there, because that is the place we would have to get off the elevated to get in the subway to connect with a subway, and the people from that section have through service to New York and up Broadway, which in my opinion will more than counterbalance any damage accruing to the property on account of strengthening and enlarging the structure.

By Chairman Thompson:

Q. If you get a compromise where you give them eighty-five years instead of perpetuity, do you think that is a gain? A. Yes,

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sir. In eighty-four years there will be a difference, and the corporations are looking way ahead. Another trouble in giving a franchise in perpetuity, the elevated roads in New York should come off the surface as soon as possible, and if we give a franchise in perpetuity in Brooklyn to get rid of them, the people in Second, Third, Sixth and Ninth avenues, in New York, will ask for the same thing in New York for those franchises.

Q. You have tied up the subways for eighty-five years in New York? A. That could be done by consent of the companies.

Q. There is not any precedent of their consenting to anything, is there? A. There would be if the company consented in Brooklyn, and the city gave them a perpetual franchise in a subway in place of their elevated. It would be a sort of a precedent that might work to the disadvantage of the city.

By Mr. Lewis:

Q. Is there any further statement you wish to make? A. No, sir; I don't think there is.

FREDERICK L. CRANFORD, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. You may proceed with any statement you have to offer. A. I would like to say in relation to Mr. Carpenter's statement about Mr. Whitney, of yesterday, that I have been familiar with the subway situation and the elevated railroad situation in Brooklyn and had talked these matters over with Mr. Whitney prior to the agitation for changing the Fulton street elevated in Brooklyn, and that about or nearly two years ago, we talked that over on several occasions, and my remembrance of Mr. Whitney's attitude was that an error had been made in the dual contract, in that the central section of Brooklyn was improperly provided under the dual contract with rapid transit service, and there was a further error in those contracts in that the elevated railroads and the subway system of the B. R. T. were not brought into operating coordination, and since the formation of the Committee of One Hundred I have repeatedly talked with Mr. Whitney about that Fulton street situation, and have had a great deal of encouragement

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from him and help from him, in trying to work out a solution of the difficulty that exists there.

Q. What is your attitude toward the elevated structures in Fulton street as compared with the attitude of Mr. Carpenter? A. I do not believe they greatly differ.

Q. You are opposed to the construction of the plate girder type of road? A. I think it is a great shame to rebuild and reperpetuate that elevated railroad through the only main avenue we have in Brooklyn that is capable of possibly being made attractive. It is the front door to Brooklyn and it leads to the Brooklyn bridge, and I think now is the opportunity if there ever was one when we should make every effort to try and get that elevated off from there.

Q. Who is responsible for the continuance of the elevated structure, in your opinion? A. They have a perpetual elevated railroad franchise.

Q. Was there any effort made to your knowledge to obtain the surrender of the franchise in exchange for the right to operate through the subway system? A. Not that I know of.

Q. Is it feasible to make such an exchange? A. I believe it would be feasible and advantageous to the city and advantageous to the railroad company.

Q. What is the attitude of the company upon that proposition, if you know? A. The attitude of the company has been stated in writing to the Public Service Commission that they are willing to enter into negotiation with that end in view. That is, I do not know that — They have not made any offer to end their perpetual franchise but they have made an offer to arrange for the construction of a subway through Lafayette avenue and Livingston street and Clinton street and remove their elevated on Fulton street from Cumberland street to the Brooklyn bridge, and that offer is still under advisement.

Q. And in the meantime the structure is being rebuilt and strengthened? A. They have given permission to the company to extend the third-tracking about a mile from Nostrand avenue west to Cumberland street.

Q. Which is a very expensive operation? A. Which costs about five hundred thousand dollars a mile, I understand.

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Q. And once installed is likely to forever perpetuate the elevated structure in Fulton street, is it not? A. I do not believe the people of Brooklyn will stand for it forever, but it looks to me as if this will fasten it upon us for at least a generation.

Q. I take it, in your opinion, the Commission has made a mistake in not providing for the abandonment of the elevated structure in Fulton street? A. I so believe, yes, sir.

Q. And which Commissioners, if any, do you blame for that mistake, or hold responsible? A. The error was made in the dual contract, in my opinion.

Q. And that dual contract was negotiated and signed by Commissioner McCall? A. Yes, sir.

Q. And at the time when Commissioner Williams and Commissioner Cram were members of the Commission? A. Yes, sir.

A. And did you oppose it at that time? A. Publicly, no.

Q. Were you a member of the Committee of One Hundred at that time? A. The Committee of One Hundred was not formed at that time.

Q. Were you opposed to the dual system contract? A. I am not convinced of the wisdom of the dual contract.

Q. Do I understand that you are now the consulting engineer for the Committee of One Hundred? A. I am a member of the Committee of One Hundred, and I have talked with them on engineering questions a good many times.

Q. You are an engineer by profession, are you? A. I am a contractor by profession and not an educated engineer.

Chairman Thompson.— What is the difference between an engineer and one that is educated?

Mr. Cranford.— I meant a graduate engineer.

Q. You have found Mr. Carpenter active, have you not? A. Mr. Carpenter has been very active.

Q. And you regard him as a fair-minded man, do you? A. No, sir, I do not, if yesterday's expression of opinion is an example.

Q. Prior to yesterday what was your opinion? A. I think he is very energetic and very earnest, but I would think that his earnestness sometimes carries him a little too far.

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Q. Does your association, has it in any way been a party to the litigation which Mr. Carpenter is interested in? A. No, sir.

Q. Has it had no interest in the maintenance of that litigation? A. In a negative way, yes, sir.

Q. What do you mean by a negative way? A. I can only express my own opinion about that litigation. I did not myself believe that that litigation would hold, and I felt that the reasons that we had for asking and insisting upon a change in the transit situation in Brooklyn had sufficient basis without any legal action.

Q. But they were disregarded, were they not, by the Commission? A. We are not out of court yet, with the Commission. As a matter of fact, the proceedings of rebuilding west of Cumberland street have been held up for six months' period now, after the litigation has apparently been defeated.

Q. What litigation is pending now in connection with that? A. I know of none.

Q. I understood you to say you were not out of the woods in the litigation. A. I have not been a party to the litigation, and I do not know where they are.

Q. Do you know of any litigation pending on this subject, other than that in which Mr. Carpenter has been a party? A. I read in the papers last night further injunction had been asked.

Q. Your interests, or the interests of your association are identical with the interests of the association Mr. Carpenter is interested in? A. Largely so.

Q. Were you invited to join with his association in the prosecution of the action? A. Yes, sir, I think we were.

Q. And declined? A. I declined.

Q. For what reason? A. I did not think that litigation was the best way to go at it, and I think we have solid and substantial reason to ask the Public Service Commission to make changes in their dual contract at that point, and that those are stronger than they would be by trying to force them through the courts.

Q. Isn't it true the litigation is based upon the question that the preliminary jurisdictional rights to construct this road have not been acquired by the Brooklyn Rapid Transit Company? A. I am not familiar with the detail of that litigation.

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Q. Isn't that generally speaking the basis of the action which was tried before Judge Brown? A. You mean that the consents of the railroad company were fraudulent?

Q. No, the consents that were required under the statute and under the contract had not been obtained to such an extent as would justify the going ahead with the work? A. I believe that is so.

Q. And that is a substantial ground for seeking to prevent by litigation the construction of that work, is it not? A. I am not a lawyer, and I would not give a legal opinion.

Q. Wouldn't it seem to you that is a substantial ground? A. As I have looked at the situation, it seems to me the Commission had committed itself in a contract with the railroad company.

Q. That contract is based on the acquisition by the railroad company of certain rights from the property owners? A. Yes, sir.

Q. And has no effect, unless the rights should be obtained? A. Yes, sir.

Q. And before they can legally build the road, they must acquire those rights, and if they are seeking to build the road without acquiring the rights, they are trespassing upon somebody else's rights? A. Yes, sir.

Q. And isn't that a good ground? A. If that is a fact.

Q. And are your members of your association affected by the failure to obtain necessary legal consents prior to construction? A. If the facts are as you state them, they would be affected.

Q. Have you any reason to doubt the allegations of the complainant are not true? A. I have understood the referee in that matter decided the right had been obtained by the railroad.

Q. You did not know that when you were asked to become a party to the litigation? A. No, sir.

Q. Will you tell us the reason why your association refused to become a party? A. I only answered for myself.

Q. You don't know the reasons for the other members of the association? A. No, sir.

Q. Or Mr. Shaw, the president of the association? A. No, sir.

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Q. Your association has not been active in the assertion of the legal rights of its membership? A. In the legal proceedings?

Q. Yes. A. No.

Q. And you have not sympathized with the efforts made by the organization in which Mr. Carpenter is a member? A. I have entirely sympathized.

Q. But you have not assisted financially? A. No, sir.

Q. Have you stated everything you care to state upon the subject? A. Yes, sir, I think so.

By Chairman Thompson:

Q. Is Mr. Carpenter a member of your Committee of One Hundred? A. Yes, sir.

Q. Have you ever taken any steps to have him put out of the committee? A. No, sir.

Q. You believe he is earnest in his efforts? A. Yes, sir, and a little over-earnest.

Q. You think he is perfectly sane about it, don't you? A. I expressed my opinion about that. I think he is a little over-earnest.

Q. Do you think he is insane? A. Not in the slightest.

Q. You think he is sincere? A. Yes, sir, he is very sincere.

Q. Has he any personal axes to grind, that you know about? A. I think he is very earnest in the advocacy of the removal of that elevated and getting connection for central Brooklyn with the subway system.

Q. Do you think he has any personal matters other than the public matter he is representing individually? A. No, sir, not in the slightest.

Mr. Lewis.— You have no other witnesses to offer?

Mr. Whitney.— No, in view of Commissioner Williams' testimony on the matter of service.

Chairman Thompson.— I do not care to make any comment on this situation now.

Mr. Shaw.— May I make another statement?

Chairman Thompson.— Yes, sir.

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Mr. Shaw.— I wish to say what I think Mr. Carpenter will substantiate. My recollection is the Committee of One Hundred was never invited to participate in these litigations which have been brought. The issue never came up as to whether we should go in officially or not, and it was never brought before our executive committee.

Chairman Thompson.— According to the testimony yesterday, you are a good deal of money ahead that he did not invite you.

Mr. Shaw.— That is probably true, but our expenses have been quite large.

Mr. Carpenter.— The individuals of the Committee of One Hundred, many of them, have been a party.

Chairman Thompson.— Mr. Cranford, I was wondering in reference to this matter; you said you were not out of court yet; do you mean the Public Service Commission can do something for you in reference to getting that subway?

Mr. Cranford.— I think so, and I think they should, too.

Chairman Thompson.— Couldn't they have done it in relation to the whole line, and didn't they have the whole power; if they went at it to fight real vigorously in favor of the property owners, do you think they could have got it?

Mr. Cranford.— I believe so.

Chairman Thompson.— And do you think there has been anybody over there in the Public Service Commission, engineers or lawyers or any others, that have been real vigorous for the prevention of that to the Public Service Commission?

Mr. Cranford.— Yes, sir.

Chairman Thompson.— Who?

Mr. Cranford.— Mr. Travis Whitney and Mr. Leroy Harkness, among others. I do not mean they would agree with me on every detail, but I think they have been very earnestly interested in trying to find a solution of the problem.

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Chairman Thompson.— I asked you if they had been vigorous to present the property owners' case, to get that side and get that before the Commission?

Mr. Cranford.— I have never been in any of these executive sessions. I know the property owners have been before that board and before the Board of Estimate many, many times, and I believe there is a possibility of whether that should be done there of very great importance to Brooklyn.

Chairman Thompson.— You would have to be vigorous on the people's side, in order to get anywhere?

Mr. Cranford.— Yes, sir, you sure would.

Chairman Thompson.— Do you think there is anybody in the Commission that is vigorous in presenting the property owners' side to the Commissioners?

Mr. Cranford.— I would not know as to that.

Mr. Lewis.— Have Mr. Whitney and Mr. Harkness shown a disposition to see that the people's side was presented?

Mr. Cranford.— They have been very sympathetic with the arguments I have made to them, and I have talked the subject over with them many times.

Mr. Lewis.— And is it the general opinion among your people, Mr. Whitney and Mr. Harkness have shown a tendency to sustain them in their efforts to accomplish what they have wanted to accomplish?

Mr. Cranford.— I have felt that they have made that effort, but I would not speak for anybody else.

Chairman Thompson.— I see Mr. Momand here. Do you want to present anything further to the Committee in relation to that matter?

Mr. Momand.— I understood it was adjourned to today.

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Chairman Thompson.— I do not see Commissioner Williams here. I do not want to keep you coming here every day, if Commissioner Williams is not coming any more. I will notify Commissioner Williams if he wants to be heard to-morrow morning he can come in.

Mr. Momand.— There are several very important matters he should have an opportunity to answer that were brought up the other day.

Chairman Thompson.— You will notify Commissioner Williams that the matter will be taken up tomorrow morning, if desired. We will suspend now until tomorrow morning at 11 o'clock.

Whereupon, at 4:50 o'clock P. M., an adjournment was taken to 11 o'clock A. M., January 15, 1916, at the same place.

JANUARY 15, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Quorum present.

Chairman Thompson.— The Committee will come to order.

HERBERT L. CARPENTER, being recalled for further examination, testified as follows:

By Mr. Shuster:

Q. Mr. Carpenter, you wish to make a further statement, do you? A. Why, I feel that it is my prerogative to make a further statement, in justification of my previous testimony.

Mr. Harkness.— Is this a voluntary statement, or on request of the Committee?

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Chairman Thompson.— I don't think it makes any difference. The Chair will decline to give any statement on that ground at all. The Committee will regard Mr. Carpenter privileged as Mr. Whitney, the same thing. I do not want to be mean, or appear mean, to either side of this controversy, and I am going to insist that the fact is the fact, and I am not going to listen to any technicalities in these matters. If Mr. Whitney has attempted to act as a Public Service Commissioner on his own initiative, in any manner, it is important to know. For that reason, Mr. Carpenter's statement was immediately ordered to be taken here, and when Mr. Whitney returned, it got into somewhat of a personal controversy. Having ordered Mr. Carpenter on the stand, it is the duty of the Committee not to protect him any further, but to make him on an equal footing with Mr. Whitney, so far as anything of that kind is concerned. I decline to take Mr. Carpenter at any greater extent or with any greater force, but I insist with an equal force, so that I can be understood about the situation. I have nothing personal about the matter.

Q. You may proceed, Mr. Carpenter. A. I wish to first say, Mr. Chairman, that I have no animus whatever towards any member of the Commission, but that my actions and my statements are prompted primarily and entirely in an effort to perform a public duty and see an unquestioned wrong righted in behalf of Brooklyn, and that is my only incentive in this matter, aside from such personal interest as I may have in the preservation of the rights of property owners, and our own rights in Brooklyn, which are vitally affected by this great structure which we are using every effort to prevent the erection of in the form now started. My statements before the Committee were largely in direct answers to the counsel, and my answers were given in good faith and to my best knowledge and belief. There is one statement which I would like to make, which may bear a little more light on my anxiety to uncover the influences which seem to be working against us in the Commission, and that is a statement of Commissioner George V. S. Williams made to me at the time our counsel served the papers of injunction on him. Mr. Williams said to me, "I

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am going to retire from the Commission on February 1st. I cannot say very much to you now, but when I retire from the Commission, I will give you some important information. This matter has been fixed for a long period of time." This statement of Mr. Williams indicated to me that there were forces working against us in the Commission, and in behalf of the railroad company, and that we had up to this time been unable to locate or successfully combat those forces, and I believe this information would bear further investigation.

Mr. Harkness.— May I ask the witness whether that was all the statement Commissioner Williams made to him on which he predicates this assumption?

Chairman Thompson.— I think, perhaps, under the circumstances, when Mr. Carpenter completes his statement, if Mr. Harkness wishes to ask him questions, he may be privileged to do so.

Mr. Carpenter.— In answer to Mr. Harkness' question I will say that the entire substance of my conversation with Mr. Williams, in addition to the statement above outlined, was included in my testimony of two days ago.

Q. This latter statement we understand was included in your statement two days ago? A. No, sir; it was not. That is according to Mr. Harkness' question. He asked whether that was all the conversation which occurred between Mr. Williams and myself at that time, and I say it was substantially all except that which is in the testimony of two days ago. I will limit that to the extent of saying that Mr. Williams — I will refresh my memory and say further in answer to Mr. Harkness' question, that Commissioner Williams, following the questions and answers which were carried on between Mr. Whitney and Mr. Carpenter, Mr. Williams called me back into his office and said, "Now, Carpenter, you are mistaken about Mr. Whitney's attitude with respect to the particular question of the physical connection between Fulton street elevated and the subway. Mr. Whitney has always been in favor of — or has for a long time been in favor of this connection, and has helped you fellows in Brooklyn in every way

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he could in the Commission for this connection." I mention this because when I testified two days ago about this Commission, I think the record will show that I at no time questioned Mr. Whitney's attitude with respect to the physical connection which is so important to Brooklyn, but that I did criticize the attitude of Mr. Turner in opposing this physical connection, as we believed from every standpoint, and I would further say in this connection that Commissioner Williams, in answer to my plea that this matter of the physical connection might be brought properly before the Commission, has made the statement that, " Mr. Turner is against you with Mr. McCall, and I am for you, and I believe that the subways which Mr. Turner says will be congested by this traffic will not be congested for ten years." Mr. Williams said that to me in reference to Mr. Turner's attitude against this physical connection.

Q. What did you understand Commissioner Williams to mean by the statement that Mr. Turner and Mr. McCall were against you, and he was for you? A. I had no definite explanation of his statement in my mind, but it was very straightforward and final.

Q. Was a proceeding pending at that time before the Commissioners, in which you or your association were one of the parties? A. There were, and that is another opportunity to show where the Commission has absolutely failed to give us the consideration that we have asked for. On July 17, 1915, I communicated at length as president of the Fulton Street Protective League with Chairman McCall, and if the Committee would allow the indulgence, I would like to read that letter, because it was prepared after a year's study of the situation. Am I privileged to read the letter or not?

Q. That letter is not in the record before this Committee? A. It is not.

Q. And is it pertinent to this controversy? A. Very pertinent. It required a reason from the Commission why Mr. McCall and Mr. Turner have opposed this important improvement to Brooklyn.

Q. You may proceed.

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Q. Mr. Carpenter read in evidence letter addressed to Hon. Edward McCall, Chairman, Public Service Commission, New York city, and dated July 17, 1915, as follows:

FULTON STREET PROTECTIVE LEAGUE

Brooklyn, N. Y., July 17, 1915.

Hon. Edward E. McCall,
Chairman, Public Service Commission,
New York City.

Dear Sir:—

As the result of the "Fulton Street Third Tracking" litigation now before the court, the Public Service Commission and the Board of Estimate, two important points stand out by which the finances of the city of New York may be greatly conserved, the property of thousands of property owners in central Brooklyn saved from damage of many millions of dollars, and by which the great population of central Brooklyn and the population to the east in both Kings and Queens counties obtain direct transit facilities which are being afforded practically every other important section of the greater city. They are:

First: In view of the wrongful type, proportions and cost of the great steel viaduct which the railroad company have already built from Sackman street to Nostrand avenue, it is vital that your Commission refuse to approve the plans submitted by the railroad company for similar construction west of Nostrand avenue, and that you insist upon a proper reinforcement of the present structure from Nostrand avenue to the Brooklyn bridge necessary to carry the heavier trains, and compel the railroad company to keep within their franchise rights and requirements, on the Fulton street line, relative to the use of the open lattice work construction and Phoenix columns. It is estimated that the construction already completed by the railroad company on Fulton street will cost the taxpayers of the city about $500,000 per mile in excess to the amount estimated and authorized by the Board of Estimate for this third track work. This condition is

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wrong and should be thoroughly investigated and action taken by the Commission.

To continue such a structure as is now built east of Nostrand avenue, down through the main highway of the borough of Brooklyn, would be a civic and official crime and the most ruinous act ever suffered by this borough.

Second: In view of the difficulties of negotiation with the railroad company to build an alternate subway connection to accomplish the removal of the Fulton street elevated structure and the inability of the city to provide the necessary funds, at this time, you are asked to arrange under authority of the specific terms of the pending contracts of the city and the B. R. T. Railroad Companies, a physical connection, temporary or otherwise, between the Fulton street elevated line and the Ashland place tubes of the B. R. T. subway system. This would involve about 1,500 feet of subway and an incline starting probably at or near Cumberland street and connecting with the Brighton Beach connection of the subways at St. Felix street.

This physical connection, which should be built at once, would provide excellent through transit for the most populous, fully developed and heaviest taxpaying section of the borough of Brooklyn, and a population of considerably over 800,000 people.

The cost of this connection is estimated at about one million dollars ($1,000,000). As the terms of the pending contract are interpreted, the Public Service Commission can authorize and direct the building and operation of such a connection as an extension or connection to the existing system, provided the Board of Estimate appropriate the required funds for construction and arrange for the distribution of operating charges and receipts involved.

If the city of New York has approximately $1,000,000 to spend on improvement in transit conditions in Brooklyn, with particular reference to the Fulton street line, the utilization of such a fund in the building of this physical connection

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would seem the only practical and just expenditure to make. To expend $900,000 and possibly much more for the relocation of the downtown Fulton street elevated structure of Adams street, only to continue the poor and inconvenient service rendered on the Fulton street line, and increase the already dangerous congestion on the Brooklyn bridge, would seem unbusinesslike and entirely wrong. The expenditure of the same amount of money, for the Fulton street connection, would save many millions of dollars in assessable values, would give excellent service to a great population otherwise isolated from direct service to New York and would relieve the greatest element of congestion from the Brooklyn bridge.

The Bridge Commissioner advises that such an arrangement would be a great benefit to the borough of Brooklyn, would relieve a serious condition for the borough of Brooklyn, would relieve a serious condition for the Brooklyn bridge, would more equitably distribute the great transit facilities provided for Brooklyn and would not congest the train service at the subway center at Flatbush avenue and Fulton street or at the DeKalb avenue station.

Will you please advise this League what your attitude and that of the Commission is relative to the two points, above outlined, and what action the Commission will take in these matters.

Respectfully yours,

(Sgd.) HERBERT L. CARPENTER,

President, Fulton Street Protective League.

HLC/GMP

Q. That letter was forwarded to Commissioner McCall. A. Forwarded to Judge McCall, and on July 20th, Judge McCall personally replied.

Letter of Judge McCall, dated 20th, above referred to is as follows:

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PUBLIC SERVICE COMMISSION
For the First District,
Tribune Building, New York
Office of the Chairman.

July 20, 1915.

Herbert L. Carpenter, Esquire,
Fulton Street Protective League,
555 Nostrand Avenue, Brooklyn, New York.

Dear Sir:—

I have your letter of July 17th, and I have referred the same to the chief engineer of the Commission with a request that he confer and advise with me in the premises. As soon as I have finished my conference with him, I shall write you further in reference to same.

Very sincerely yours,
EDWARD E. McCALL,
Chairman.

Mr. Carpenter.— That is the most important matter now before the Public Service Commission affecting two million people of Brooklyn. No public attention, apparently, was paid. I know the matter was given careful consideration in the Commission, and discussed by the engineering department quite fully, but no hearings were had.

Q. Were hearings asked for? A. Yes, sir, as I indicate in my letter of August 26th, over a month after Mr. McCall's reply:

FULTON STREET PROTECTIVE LEAGUE
Executive Headquarters,
444 Nostrand Avenue,
Telephone, 69 Decatur.

Brooklyn, N. Y., August 26, 1915.

Hon. Edward E. McCall, Chairman,
Public Service Commission, New York City.

Dear Sir:—

On July 17, 1915, Mr. Herbert L. Carpenter, president of the Fulton Street Protective League, wrote you relative to

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the third tracking of the Fulton street line in Brooklyn, east of Nostrand avenue, and the building of a physical connection between the Fulton street elevated line and the subway lines at St. Felix street. On July 20th, you wrote Mr. Carpenter that the matter had been referred to your engineering department and that we might expect to hear further from you after a conference with your chief engineer.

As the construction plans for the new subway work at St. Felix street will be finished within the next few days and as the proposed connection of the elevated line with the subway at this point will require some minor changes in these plans in order to save additional expense later on, we are most anxious that this matter be given a proper hearing at the earliest possible date.

We believe that after a full investigation and proper hearings of this matter, the Public Service Commission will direct the construction and operation of the proposed connection and for that reason it seems most important that immediate action be taken in providing for the Fulton street connection at St. Felix street in connection with the pending contract for the construction of the Brighton line at that point.

Will you please advise the League when and how this matter may properly be taken up for early action by the Commission.

Very truly yours,

FULTON STREET PROTECTIVE LEAGUE,

JDR/GMP Secretary.

Mr. Carpenter.— With those communications were sent a copy of the officers and members of the Committee of the Fulton Street Protective League, which are made up of the most prominent men of Brooklyn, presidents of banks, heads of industrial institutions, and large property owners, and the most prominent men of the city. No further consideration or action or reply has been received in connection with that appeal.

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Q. Do you know of your own knowledge, from any inspection of the Public Service Commission records or communications received in any form from the Commission or its subordinates as to whether or not your communications were referred to the engineering department? A. Yes, sir. The matter was looked up in my presence, and a long report from the engineering department was shown me, attached to my letter, and in order to verify the fact, I had the Public Service Commission make this copy of my letter attached to the engineer's report, which they would not show me, so that there is no question as to the fact it was given consideration, but we have received no reply, and no action has been taken, as I know of.

Q. Did you see the report? A. Yes, sir, but was refused the opportunity to read it.

Q. Do you recall by whom that report was signed? A. No, sir, I cannot give any detail other than it was quite a lengthy report. Now, going on in connection with my testimony of two days ago —

Q. Before you digress from the point, you state that Commissioner Williams stated to you in this language, "This matter has been fixed for a long period of time;" did Commissioner Williams further amplify that statement? A. No, sir, that was so conclusive and so explanatory of the entire condition that it required no further discussion by him or by me.

Q. What did that statement convey to your mind? A. That statement conveyed to my mind that the forces opposing our contention had overridden us and our right, and that the matter had been, as Mr. Williams said, fixed long before our recent hearings, and our efforts would be for naught, for we were unable to overcome what had been done in this matter.

Q. Well, this conversation was after your communication to Commissioner McCall that you have just read into the minutes? A. This conversation relative to this statement of this matter being fixed, held day before yesterday in Mr. Williams' office at the time our counsel served the papers of injunction on him as one of the Commissioners.

Q. Was he referring to that particular proceeding? A. Not to the proceeding relative to the physical connection.

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Q. What was he referring to? A. He was referring to the question of the great structure which is being forced down Fulton street by the railroad company.

Q. Did you understand by his statement that the Commission had approved and authorized the structure to be carried out in the form in which you objected? A. No, sir, my beliefs from Mr. Williams' statement were that the organization of the Commission and the railroad company's influence had created a condition long ago which we would be unable to overcome. That was my understanding, from Mr. Williams' statement, and with a full and thorough knowledge of the litigation and the elements involved in our fight against this great structure.

Mr. Lawson presiding.

Q. You may proceed with whatever else you have? A. Have any of the newspaper men here a report given them by Mr. Whitney about this matter, his answer?

(No response).

Mr. Whitney, as I understand it, made a statement that I had been practically ousted from the Committee of One Hundred and had started another organization outside for my purposes. If he made that statement it is an absolute falsehood and is in keeping with the attitude which Mr. Whitney has shown in other matters. I am to-day one of the most active members of that committee and am as influential in the carrying of its motions of actions as any member of the committee, and not only in previous meetings but at its last meeting my actions in that committee have been commented on and approved by the majority of that committee previous to and at the last meeting held by the committee. I have not had an opportunity to read this testimony which Mr. Whitney gave, although I was here present, but I believe two witnesses have been subpoenaed here, one to testify as to my conversation with Mr. Williams, and I will testify that the only men present, immediately present, at the time the conversation between Mr. Whitney and myself occurred, was Mr. Brischell, our attorney, but in the other end of the room were two men standing, and that Mr. Williams was seated in another room in his office at his desk and that

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Mr. Williams only heard the latter part of this conversation after the forceful words of Mr. Whitney and Mr. Carpenter had been heard from a distance by him. I also believe another witness has been subpoenaed to verify the statement that Mr. Whitney had received these communications from associations in Brooklyn relative to this matter and had stated that he had not and did not believe it necessary to refer them to the Commission, on the ground that he was thoroughly conversant with their attitude. Mr. Whitney also refuted this testimony given by me.

Chairman Thompson presiding.

Witness (continuing).— One more thing I would like to add is that in this injunction proceeding in connection with which these affidavits were on file, there is a lack of frankness on the part of the Commission to allow this issue to be tried in the courts, which is defeating the interests of the property owners and the people of Brooklyn. The affidavits of Mr. Whitney are skillfully drawn, but they are most misleading to anyone not thoroughly conversant with the issue, and I believe that it would be invaluable to this Committee to have the moving papers, and Mr. Whitney's affidavits subpoenaed and placed upon the record of this Committee, as a permanent evidence of the attitude being taken by the Commission as to prohibiting the people who appeared of an opportunity to have their issues and their rights tested out in the courts. Further testimony can be brought, if desired by this Committee, concerning the attitude of the engineering department and certain statements which representatives of that department have made relative to these issues. In connection with the plans of construction of the Fulton street line, as I remember it, Mr. Whitney testified that no plans were now before the Commission pending approval on the Fulton street elevated line, between Nostrand avenue and Cumberland street, and I now testify that on the 13th, on or about the 13th of January, I personally went to the Commission and into their engineering department and was advised by several members of that department, one of them Mr. Greist, who said that "We have just received the plans of construction, detailed plans of construction of the elevated structure between Nostrand avenue and Cumberland street."

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Q. From who did they receive those plans? A. He did not state, but I presume from the New York Municipal Railway Corporation who is doing the work, and as their name is on the plan. I asked to be shown the plans, and they were shown me by another representative of the department, who said that "These are the plans that are to be approved to-day," and I said, "They are not approved by the chief engineer," and he said, "They are not yet," and I said, "Are these the first plans that have come to the Commission to show the real construction between Nostrand avenue and Cumberland street, and the arrangement of the Franklin avenue station and the three tracks going into two and using the old structure with Franklin avenue, and for the present going out into the third track below, until the Commission determined what the Franklin station should be," and he said, "Yes, these are the first plans."

Q. Do you know what his official position was? A. I do not, except custodian of the plans, I believe. I then went to Commissioner Hayward's office, and conferred with his secretary, Mr. Clark, and I asked Mr. Clark if I could have a copy of the plans, the blue prints, between Nostrand avenue and Cumberland street, and Mr. Clark said I could, he thought, and he telephoned the engineering department, and they sent down a set of plans which were the only blue prints in the Commission. And I asked him in the presence of Mr. Clark, this representative of the plan room, "Are these the latest plans between Nostrand avenue and Cumberland street?" and he said, "No, sir, those plans have not been approved by the chief engineer, but they are going to be approved to-day." That was the second reiteration of the fact the plans were there unapproved and the only plans, and were going to be approved on that day.

Q. That was about the 13th of January? A. I think it was the 13th of January.

Q. This year? A. Yes, sir. I want to be accurate, and I am a little confused as to the particular minute.

Q. This is the 15th? A. It was on the 13th, then. I thereupon asked Mr. Clark, in view of my being unable to get a copy of the unapproved plans, I be given a copy of the plan between Nostrand avenue and Adam street on Fulton, and those plans I

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have obtained, and I have a copy of one before me, which has no evidence of the approval of the chief engineer.

Q. These are the plans which the Public Service Commission claim have been approved? A. They are approved by the New York Municipal Railway Corporation, and by the consulting engineers, but they are not shown approved by the chief engineer of the Public Service Commission, although other plans in the Commission which I looked at, for Nostrand avenue, both stations and otherwise, are approved and so marked by the chief engineer. I mention these facts to show that we are not being dealt with frankly by the Commission, and this fight to preserve our rights in our property is going on to the finish, and if any individual stands in the way, without undue animus, and without any animus to anybody, we are going to learn the facts about the individual, and if he is square, we are satisfied with the facts, and if he is not on the square, we are going to get at the bottom of it.

Chairman Thompson.— On that theory, the Committee is with you.

Mr. Carpenter.— I would like to have those two witnesses called to testify on the points I have mentioned.

Chairman Thompson.— Inasmuch as Commissioner Williams was called and he is here and has an engagement at one o'clock, we will suspend with Mr. Carpenter for the present, and call him later, and at that time Mr. Harkness will be permitted to ask a few questions of Mr. Carpenter, if he so desires.

WILLIAM WILLIAMS, being recalled for further examination, testified as follows:

By Mr. Shuster:

Q. Commissioner, you have been before the Committee at an earlier day, I believe? A. Yes, sir, January 7th, I think.

Q. And you are the Commissioner of Water Supply, Gas and Electricity of the city of New York? A. I am.

Q. In your former testimony a question of the contracts for the lamps was under consideration? A. It was for gas mantle lamps, perhaps you better say, as we have about sixty contracts.

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Q. There has been a change in the character of the lamps within the last year that you use, and you are changing over from gas to electricity? A. We have reduced the Welsbach lamps from 10,000 in number to about 1,600 at this time, substituting therefor electric lamps.

Q. Those are what is known as the 200-watt gas filled electric? A. Yes, sir; not in all instances were the 200-watt substituted. When we got to Lexington, which is a thoroughfare of increasing importance and has to be lighted up better, we took the occasion to substitute for the gas lamps there, 300-watt electric lamps instead of the 200-watt electric lamps.

Q. Those have been substituted under contracts made by you with contractors for furnishing the same? A. Yes, sir.

Q. Those were contracts made after advertising and on bids? A. As to the 300, yes. Are you inquiring about the 200 in particular?

Q. Yes. A. Do you want to know how I come to install the 200?

Q. Yes. A. In 1915, we advertised for a bid on the 200-watt lamp, and we failed to get a bid. The electric company failed to submit a bid.

Q. Do you care to state the name of the electric company you refer to? A. Yes, sir; the New York Edison Company, doing business in Manhattan, and we also solicited the same of the Brooklyn Edison Company, and in neither case did we get a bid on the 200-watt lamp.

Q. Are they the only electrical corporations from whom the city could receive bids? A. Yes, sir, they are, because in street lighting, the city contracts for so-and-so much of a payment per annum usually including the post and including the lamp and the current to the lamp and the maintenance to the lamp, and the answer to your question is yes, those are the only companies from which it would have been practicable to solicit a bid of this character. The bids were thrown open — the bidding was thrown open to the public.

Q. That was advertised in accordance with the law? A. Yes, sir, but we got no bid at that time, on the 200-watt lamp, you know.

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Q. You did invite bids, and that is a matter of record in your office, is it? A. Yes.

Q. Now, then, how did you then contract for the 200-watt gas filled lamps, by private contract? A. I will tell you how we did that. We had been trying very hard to get the companies to bid on these lamps, because their installation would mean a great deal of saving, and we could install them in lieu of 300, as soon as we could get them, in many places, and by April, I think it was April or May, the New York Edison Company was willing to submit to us a bid thereon, and it was a bid of forty-five dollars, and we accepted it.

Q. That was by private arrangement, was it? A. Let me finish. The contract provided, as all previous contracts had, that the bidder, the contractor, should furnish to the city, any new lamps or any improved lamps that came along at a price at least as favorable as he furnished it to any other persons under like condition, and it was under that clause in the contract we took this later bid.

Q. That was the bid of April? A. Yes, sir, on the 200-watt lamp.

Q. You have a copy of your contract for those watt lamps with you, have you? A. For the 200-watt lamps, I don't think I have it here, no.

Q. That contract was for how long a period of time? A. For until the end of 1915. The contracts are required to be for not over one year, by law.

Q. And that was a contract in writing entered into between the New York Edison Company and the city, or you as Commissioner, representing the city? A. Yes, sir, it took the shape of letters.

Q. But there was really no formal public advertisement or bidding upon which that contract was made? A. As to those 200-watt lamps, no, none other than that of January, in which we called for bids on them.

Q. But that advertising had failed to produce bids? A. Yes, sir.

Q. And in April you went ahead and made a contract private in its nature, without any bidding or advertising? A. There was

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no new advertising in April, for those 200-watt lamps. We made that arrangement as it was for the best interests of the city.

Q. That contract expired December 31st last? A. Yes, sir.

Q. What is the situation for this year? A. At the December bidding, 1915, we made a contract for the 200-watt lamp, a contract of the most formal kind, at $43 a lamp a year.

Q. There was bidding had for the 1916 contract, was there? A. Yes, sir.

Q. On advertisement? A. Yes, sir.

Q. And how many bids did you receive? A. Only one.

Q. Are we to understand that these lamps cannot be furnished by anyone except the two electrical companies located in the city? A. The lamps can be furnished, but the lamps alone in connection with street lighting are no use. We have to have some one contractor who will furnish the lamps and send the current through them, and maintain the lamps and maintain the lamp posts for us.

Q. In 1915, you did advertise for the gas lamps? A. In 1915?

Q. For the year 1915 you had advertised for bids and the low bidder did not receive that contract on the original advertising, isn't that true? A. Yes, sir.

Q. As you testified the other day? A. Yes, sir.

Q. And there was a subsequent advertising and bids received and the low bidder was the same under the second series of advertising? A. That is true.

Q. And what was the length of time that elapsed between your rejection of the first bid and the advertising of the second, for the second lot of bids? A. I should like to refresh my memory. I have got the papers here. I rejected the first bid, February 9th, and I opened the second bid March 1st, and since it was advertised for at least fifteen days, I presumably called for it February 15th or thereabouts; in other words, to answer your question, some six or seven days after the rejection of the first bid.

Q. Were contracts let after the second bidding? A. They were not. I had to reject the second bids.

Q. And what was the ground of your rejection of the bids the second time? A. The grounds — there were several grounds for ejecting the so-called low bidder the second time. In February

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the department thought that it would require 9,000 gas lamps throughout the year and the proposal called for bids on 9,000 gas lamps. The low bidder bid only one-half of that number, namely 4,500, and in addition to that, it bid on a select portion of the city. The bid was in no sense responsive to the call for bids, and the only responsive bid was that of the high bidder which bid for 9,000 lamps, pursuant to the number named in the proposal.

Chairman Thompson.— Isn't this already on the record? I think all of this is on the record.

Mr. Williams.— Yes, sir, it is all on the record.

Mr. Shuster.— Of course, I was not here on the occasion of the last hearing and I was not aware of that fact.

Q. Now Commissioner, do you know the Pressure Lighting Company of Brooklyn, know of that company? A. Yes, sir, I heard a good deal about that when I first came into office.

Q. And it had a contract to furnish incandescent mantle street lamps in Brooklyn in 1913, I believe? A. That was before I took office. I understand that it did.

Q. And do you recall when that contract expired? A. No, sir, I should have to refresh my memory as to that.

Q. Did they have any other contract with the city of New York? A. Not under me.

Q. In your report to the Mayor under September 18, 1915, in connection with the happenings between your department and the Public Lighting Service Corporation, you state as one of the reasons and grounds for the handling of the bid of that company this,

> "Moreover, one of its principal representatives, Mr. Momand, had been prominently connected with the Pressure Lighting Company which had abandoned certain similar contract work in the Borough of Brooklyn during the year 1914;"

that is a fact, is it? A. I should rather show you the — I have not refreshed my memory on that point. I should rather show you a letter which we have on our files from Mr. Momand on

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that subject. The Pressure Lighting Service Company was torn asunder with dissensions amongst its officers, and I know that its contract with the city of Indianapolis had been declared abandoned. I merely at that time was showing one of the reasons why it was proper for me to go cautiously in selecting this new bidder whose only official who knew anything about this business was Mr. Momand who had been connected with the Pressure Lighting Company and with which the city had disagreeable experiences, and the whole Pressure Service Lighting file is at your disposal.

Q. At the time you made this official report to the Mayor of the city, was this fact, were you cognizant of this as a fact? A The lighting of Brooklyn by the Pressure Service Lighting Company was suddenly stopped. It is my best recollection it was stopped because of dissensions amongst officials thereof, and I will send you the letter of Mr. Momand on that subject which is on our files and which I have in mind when I say that. That remark is not a material part of my letter to the Mayor.

Q. It was one of the grounds, was it not? A. The letter speaks for itself, of course.

Q. Did you know that to be a fact at that time? A. I believed it to be a fact.

Q. And the source of your information and the grounds of your belief were the correspondence and records in your office? A. Yes, sir. And the trouble that I had learned that the city had had with the Pressure Service Lighting Company through former chief engineer of light and power, Lacombe.

Q. Do you say it is now true that they had at that time abandoned their contract with the city of Brooklyn? A. They stopped rendering that service to the city of Brooklyn and they stopped it as the result of their bickering, and whether they stopped it as the result of an express contract or whether they were continuing on and willing to do it and then stop I would not at this time want to say.

Q. Would you say on September 18, 1915, at the time this report was made that they had actually abandoned their service; was that true at that date? A. I understand so, yes, sir.

Q. You understood so then? A. Yes, sir.

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Q. Do you now so understand? A. I do. Of course I have a department with eight big activities and a multitude of things to attend to and it is quite possible as to some detail, and I am sure it is as to a number of details, that I have not the same accurate information I have about the larger activities of the department. If you would like to see some of the correspondence on our files showing the bickering of the Pressure Lighting Company, here is a letter from Mr. Momand to me. May I read five lines?

Q. Yes. A. March 18, 1914, Mr. Momand writes me, speaking of the city of Indianapolis,

> "My inability to give them any assurance that the company would be able to maintain the service under the circumstances was followed by the cancellation of the contract by the Board, and my leasing the company's equipment to the city until it could make some permanent arrangement."

Mr. Shuster.— I think that is all.

Chairman Thompson.— It is no more than fair; of course Mr. Momand, through counsel, has asked some questions of you, and if you or your friends here, or people with you desire to ask Mr. Momand any questions, I am going to permit you to do that.

Mr. Williams.— I have no questions to ask.

Chairman Thompson.— If either of you have a statement to make if you put it in writing the Committee will receive it. The only thing is if facts come up in your statements allowing Mr. Momand to make a statement, which we will receive, and make it in writing, and give one to Mr. Williams to give him an opportunity to answer if he desires, and Mr. Williams the same way, give Mr. Momand a copy so he can reply, and with that we will not go into the matter any further. Our wish in this is to ascertain whether or not when we come to write the law we should take up the question of permitting a public service supervision and regulation of all Public Service. You people in New York will understand that in the Public Service Commission of

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the First District, the Public Service Commission of the First District assumes inconsistent functions. I say assumes, that is not the word. The law put upon them inconsistent functions. The function of regulation and supervision is sort of a semi-judicial function the Public Service Commissions were created to exercise, but the administrative function of constructing a transit system for the city is an inconsistent one in our judgment.

The question is going to be reported by this Committee to the Legislature as to whether or not those functions should not be separated; whether or not the city of New York which pays the cost of constructing railways and transit systems should not also be permitted to construct those systems through its regular administrative forces. There is no doubt at all about the theoretical right there, and the city should never have been required by the Legislature to submit to the construction of its railroad system here by State officers. Having gone into it, the question comes whether or not you can trade horses while you are crossing the stream, and whether or not now it can be put really where it theoretically belongs. When you pass that question if you make your Public Service Commission an entirely regulative and supervisory force, the question arises should they not have regulatory and supervising powers over every public service of any kind, no matter who owns it. A question of not whether twenty-five people are stockholders and directors owning a thing, or whether two hundred and fifty thousand or five million people congregated in the city own and operate a public utility, in principle it makes no difference. That question is going to be taken up by this Committee in reference to drafting the law, and the question will come whether or not the city of New York, so far as it operates a public utility, should not be brought under the supervision and regulation of the Commission. We are not interested in any issue that might arise between your department and some one who tries to take a contract with you. We received it upon that principle. This matter came before us, and it is the only way to get at the real essentials, is to take up the concrete instances.

Mr. Williams.— I have heard the remarks you just made on that very large question. Of course the material facts concerning electric lighting contracts, which are our big contracts that

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are material to the large inquiry you have to consider only been lightly touched on. That is a very large subject, and I came here in the first place because I wrote you that letter when I read of your criticism, and I was only too anxious to give you an opportunity to make up your mind whether you wanted to stand upon that criticism. This hearing has taken another turn and gone into a very large and new field, and I would like to offer such information as I have on those new and big and large points at some other time, and separate it entirely from this controversy which gave rise to this hearing.

Chairman Thompson.— That is the reason I made the statement as I did, I thought you would be interested in the big question. We have an ambition as a Committee to make of the Public Service Commission, First District, a strong regulatory arm of the government that never again will be subjected to criticism, and big and strong enough to handle the subject, and to trust it with the whole field the subject covers.

Mr. Shuster.— I would suggest that Commissioner Williams file such memorandum on the larger question he refers to, with the Chairman of the Committee.

Chairman Thompson.— Yes, the latter part of next week, if possible.

Mr. Shuster.— Briefly, whether or not municipal corporations engaged in the business of rendering a public utility service should be placed under the Public Service Commissions Law?

Chairman Thompson.— The question has been suggested to me some days ago, and I am just reminded of it again. It has been suggested that the Edison Company or some distributing company of gas or electricity is permitted to string its poles and wires along the aqueducts and along the water works along the municipally owned rights of way in the city without charge, and without franchise. What is there to that?

Mr. Williams.— I protested, or I raised the issue with the Board of Estimate about a year ago as to whether or not the Edison Company should be allowed the use of the aqueduct right of way without charge. The details have passed out of my mind, and I am

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trying to refresh my mind as to them as I go along. It was for two or three months held up, through my protest, the awarding of a contract, between the New York Edison Company and its subsidiaries, on the one hand, and the city of New York, involving these matters. I prepared in that connection with the aid of engineers, some interesting papers, and I thought I was right, and I was overruled.

Senator Lawson.— Who overruled you?

Mr. Williams.— The Board of Estimate and Apportionment.

Chairman Thompson.— It is a fact that this company is permitted to string its poles and wires along the public places without charge and without rent, and I understand without taxation, is that true? A. I wouldn't want to say precisely that is true. The issue was a very complicated one, both in law and in engineering, and I would rather the papers spoke for themselves. All I want to emphasize at this time is, I endeavored to, and I did my best at that time, to bring about for the city terms more favorable than those which the Board of Estimate finally allowed.

Senator Lawson.—What were the terms they finally allowed?

Mr. Williams.— Again, I would like to say my memory is not fresh as to this. I can tell you now, I think. The question was how the three points, where the new Catskill aqueduct dips down underneath a lake or rivers, one of them being beneath the Croton lake, and the other beneath the Harlem river and the other beneath the East river, and the question was how the Board of Water Supply and Construction, which was having nothing to do with my department, how it could get the water taken out down below the surface and pumped out, and the arrangement has been made with the Edison Company to do so, and it furnishes the power, and it carries the power along high tension circuits, strung on poles which — on steel masts, which run along this aqueduct right of way. It comes back to me now. I took the position they ought to be made specifically to pay for that, that the value of that particular right of way to them, ought to be determined. I was overruled on that point.

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Senator Lawson.—Was there any consideration there, in the shape of standing ready to draw off the water?

Mr. Williams.— The Board of Estimate felt that there was adequate consideration without a specific money consideration for that. I do not wish to be understood as criticizing the Board of Estimate. I am merely making clear my position that I was very much opposed to letting them use this right of way without specifically charging them therefor, and if the matter interests you, I should like to send you my paper.

Chairman Thompson.— The thing does interest us very materially, because that touches a big question. If you are going to bring hydro-electric power into this city, this company for nothing gets itself into a very valuable position.

Mr. Williams.— That is what I thought.

Chairman Thompson.— We are interested in that, and there is some power can be developed, I am told, from the waste waters of these reservoirs that belong to the city that have not been taken into account, and we will be interested in that, and I wish you would be prepared to furnish us the papers on that next Thursday.

Mr. Williams.— Very well, and shall I come with them?

Chairman Thompson.— Yes. We do not like to look at these matters in criticism of your department. It is not that at all. I realize the seriousness of the questions your department is up against, and we are disposed to help you, and it is an important matter as to whether these companies can walk in and take these public ways, and without rent and without taxation, and they get entrenched there for years where it stifles competition.

Mr. Williams.— But, Senator, I hope I have made clear to you that my department could not possibly be open to any criticism here, because it took the ground the companies were getting off too easily, and fought to the end, and it lost.

Chairman Thompson.— We will take this matter up next Thursday.

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I have a communication here from Mr. Whitridge, president of the Third Avenue Railway Company, which I will read for the information of the Committee.

Chairman Thompson reads the letter referred to, which is as follows:

THIRD AVENUE RAILWAY COMPANY
130th Street and 3rd Avenue
New York.

January 12, 1916.

George F. Thompson, Esq.,
Chairman, Joint Legislative Committee
to Investigate Public Service Commissions, Albany, N. Y.

My dear Sir:—

I have your letter of January 8th, addressed to the various companies under my jurisdiction, which constitute the Third Avenue Railway System.

In reply thereto, I beg to say, that the resolution under which you are acting does not authorize any such inquiries as you make, nor has the Legislature itself, as I view it, any right to act in respect to most of the things concerning which you ask. A refusal, however, to answer your inquiries, merely because they relate to matters which are none of your business, would probably be misconstrued and might subject us to further attacks of the kind which some public authorities and a portion of the press feel at liberty to launch at street railways.

I, therefore, attach hereto a statement marked "A" containing full answer to your first inquiry.

Second: I know of no other persons holding positions of trust other than those enumerated in the statement attached.

Third: In respect to the attorneys in my employ, I have to say that in addition to the various claim agents, we have an arrangement with Mr. J. L. Quackenbush to take charge of our litigated accident cases. The amounts paid to him and the special counsel employed by him during the year

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1915 are shown on the statement hereto attached marked "B."

Messrs. Evarts, Choate and Sherman also act as our general counsel and they are mostly concerned with work before the Public Service Commission, various city departments, and, I believe, they have in former years twice appeared before legislative committees. The amount thus far paid them for the year 1915 is $5,233.97.

In consequence of the misconduct or stupidity of various official bodies special counsel is occasionally necessary. During the last twelve months the Board of Estimate in this town proposed to grant franchises for the operation of omnibusses which, had they been passed, would have constituted in one street, at least, a most unwarranted and serious competition with the Third Avenue Railway Company, and in other places were obviously a nuisance to the public. Mr. John M. Bowers was employed to appear and oppose the grant of such franchises.

Messrs. Spooner and Cotton have also been retained to look after the interests of this system in respect to the assessments for purposes of taxation. During the year, for instance, our assessment upon real estate in this city has been increased $800,000, although no change whatever has taken place in the character or amount of the real estate thus assessed. Our assessment for the purpose of the franchise tax has also been increased during the year over eight millions of dollars, although there has been no change whatever in the railroad. This is a particularly outrageous performance and demands the attention of counsel skilled in such matters. The franchise tax of this railroad was litigated for ten years. It has been twice to the Court of Appeals and every question in respect to it has been settled, yet the Board of State Tax Commissioners feel themselves at liberty to play pranks of this kind.

We pay no general or special retainers, but in all of these cases the bills of counsel, when the work is completed or nearly completed, are rendered and paid. The amount to

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Messrs. Spooner and Cotton during the year 1915 is $3,126.02.

When I say that no general retainers are paid, I should, perhaps, make this exception. We pay the sum of $250 to the Legislative Index Publishing Company of Albany, N. Y., to keep us advised of proposed legislation affecting these roads which appear from time to time in the Legislature. You may possibly not be aware of it, but there formerly existed in this commonwealth what is generally known as a system of strike legislation, which was a proposal by one person or another to procure legislation inimical to corporations in the hope of terrorizing them in making payments to those interested. I remember upon the occasion urging a Senator to vote against a certain proposition to amend the Code of Civil Procedure, and he replied —" Oh, you lawyers merely talk, what I am asking is, is there anything in this for Mrs. C and the six little C's," and later I heard of a member of the Legislature who commenting upon some reform movement remarked — " If I cannot use my opportunities in Albany, I might as well stay at home and attend to my grocery business." We have some reason to fear a recrudescence of this state of affairs and consider that it is prudent to spend the sum of $250 a year in order that we know what is being proposed.

I hope this contains all the information you desire, and, if not, I will be glad to give you anything further you may wish.

Yours very truly,
F. W. WHITRIDGE,
President.

Enclosures.

Chairman Thompson.— In reference to the last section of this letter, if there is anything in the Legislature of the kind which Mr. Whitridge implies or apparently fears, I think it would be well to know, and Mr. Whitridge will be subpoenaed for next Thursday, to tell us about this matter, so that we can know about it.

Mr. Harkness, did you wish to ask Mr. Carpenter any questions?

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Mr. Harkness.— The questions I was to ask are not of much importance, and if I could look over his testimony of this morning, I could come in later and ask such questions as might occur to me, if any. I have no questions at this time.

WILLIAM G. BRISHELL, being first duly sworn, testified as follows:

By Mr. Shuster:

Q. Mr. Brishell, you reside where? A. 913 Lafayette avenue, Brooklyn.

Q. Are you a counselor at law? A. Yes, sir.

Q. And you are attorney for the plaintiff in the proceedings for injunction in connection with the Fulton street construction, elevated construction? A. I am one of the attorneys.

Q. Did you serve that injunction order, or attempt to serve it upon the Public Service Commission? A. I believe I served it upon the Public Service Commission, yes, sir.

Q. When did that take place? A. The 13th of January, 1916.

Q. At the office of the Commission? A. Yes, sir.

Q. And will you state what took place at that time? A. Mr. Carpenter and I went into Mr. Williams' room and explained to him the matter in hand, and left a copy of the injunction papers with him. While we were talking of the matter somebody said. "There is Mr. Whitney," and I immediately walked up with the original injunction and papers and spoke to Mr. Whitney, and just as I began Mr. Carpenter joined me coming out of Mr. Williams' room after me, and Mr. Carpenter said something to Mr. Whitney about his wishing to serve the injunction on the Commission, and Mr. Carpenter says, "How will we do this?" and Mr. Whitney says, "I couldn't tell you that," and Mr. Carpenter says, "Why not; won't you tell us how to serve this?" and he says, "No, I am not the counsel in this matter. I am not your counsel in this matter." Mr. Carpenter said, "Do you refuse to advise us how to serve this on the Commission?" Mr. Whitney said, "I do," and I followed Mr. Whitney, and I said, "I suppose, Mr. Whitney, there will be no question as to the correctness of this service?" and he said, "I don't know," and I said "there is a little uncertainty as to how this should be served," and he says, "I know it, but you

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will have to use your own judgment in that matter," and I said, "How is this usually done?" and he said, "They serve the Chairman, the way you proposed to do it," and I says, "I think that is right," and he said, "If you think that is right," and I said, "Has this ever been questioned?" and he said, "No, and it may never be, but I am not going to waive any technical rights of the Commission in the matter," and then I left a copy with him and went in and served Chairman Strauss of the Commission.

Q. You have stated all that you recall that took place at that time? A. Well, there are other little things went on but I think that is the main thing.

Chairman Thompson.— Did Mr. Whitney say he was not interested in the people that were behind that movement?

Mr. Brishell.— I do not recall those words, but he indicated he should not advise us as to the way we should proceed.

Q. You served on your own judgment? A. I did.

Mr. Harkness.— You are a lawyer?

Mr. Brishell.— Yes, sir.

Mr. Harkness.— Why did you need to ask anybody how to serve papers; don't you know?

Mr. Brishell.— This service on a Commission I considered should be served on all the Commissioners, but as a matter of fact we didn't have enough copies to serve on all the Commissioners, and I wanted to be sure of the attitude of the Commission in relation to the technicalities involved, and for that reason I tried to clear it up before I left the office.

Chairman Thompson.— You had an idea, being a Public Service Commission representing the people, they would give you an assurance with the service of one copy they would obey the injunction?

Mr. Brishell.— Yes, sir.

Chairman Thompson.— And because they were public officers u supposed they were there to take care of the interests of the blic and they might give you that assurance?

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Mr. Brishell.—Yes, sir, and that is the assurance I wanted.

Chairman Thompson.— And you felt he should have given you the information on that account, and he did not give it to you?

Mr. Brishell.— No, sir, he did not, and Chairman Strauss afterwards did give it to us and we presented the same question to him, and he said that would be all right, and that satisfied me.

Chairman Thompson.— All you wanted to be sure of was the Public Service Commission would not act until the court had the opportunity to pass upon the question?

Mr. Brishell.— Yes, sir.

Mr. Harkness.— Were you there on that day as counsel or process-server?

Mr. Brishell.— Both capacities.

Mr. Harkness.— Mr. Whitney said he was not counsel for Mr. Carpenter or the plaintiffs in this case; is that the statement he made?

Mr. Brishell.— Yes, he said he wasn't the counsel in the matter and it wasn't up to him to advise as to how we should proceed.

Mr. Harkness.— Do you remember whether he said he was not the counsel for the people?

Mr. Brishell.—I do not recall his using the words, "the people."

By Mr. Shuster:

Q. Did you have anything further you wished to say in reference to this matter? A. Nothing in regard to the service of the papers.

Q. In regard to the matter? A. There are some affidavits I incorporated into the injunction papers, and Mr. Kornder will testify, and I think there is an affidavit of Mr. Perkins I think might be of benefit to the Committee on the question of Mr. Whitney's attitude.

Q. Do you recall the contents of the affidavits? A. No, sir.

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Chairman Thompson.— Will you furnish the Committee with a copy of the statements next Thursday?

Mr. Brishell.— Yes, sir.

PHILIP J. KORNDER, being first duly sworn, testified as follows:

Examined by Mr. Shuster:

Q. Where do you reside? A. 239 Garfield place, Brooklyn.

Q. What is your occupation? A. Real estate.

Q. Do you represent some civic organization in Brooklyn? A. Yes, sir, I am president or chairman of the Fulton Street Anti-Third Track Association.

Q. Your association is interested in the third tracking and elevated improvements that are being done in Fulton street? A. Yes, sir, from the beginning.

Q. And have you had any dealings with the Public Service Commission or any of the Commissioners, or Mr. Whitney, or any of the other officers or employees of the Commission in respect to that matter? A. Yes, sir.

Q. Will you state when and with whom and the substance of those? A. I have attended many hearings in the matter. They are, of course, not important, and there is only one matter that I specifically want to mention, and that is that on January 22, 1915, I wrote a letter addressed to the Honorable Board of Public Service Commissioners for the First District, New York, of which I have a copy here, requesting an answer, and around about the first of March I had not received an answer as yet, so I went to the office of the Public Service Commission, and there asked for Mr. Whitney, knowing he was Secretary, and asked him whether he received the communication from me dated January 22d, and why I did not get an answer to it. He asked my name, and said he would look up the file, and he sent a boy to the file and brought some letters, and he there had my letter, and he says, "Yes, I received that letter." I said, "There has been nothing done about it, and why did we get no answer?" and he said, "I didn't think it was necessary." I said, "How can you as Secretary, assume the responsibility of not answering or not bringing to the attention of the Commissioners a letter sent as this one represents?" He said,

"I know that the Public Service Commission has — I know what their attitude is in this matter, and they have considered these questions, and I don't think there is any use to bring it before them." "Why," I said, "Mr. Whitney, for instance, here is the matter of consent, here is the consent that the property owners signed there for the construction of the third tracking of Fulton street, and we claim in our letter this is not in keeping with the consent; the construction is not in keeping with the consent," and he said, "In what respect?" and I said, "They are putting plate girders on there, eight to nine feet wide," and I had a copy of the consent with me, and I said, "You notice it says a third track to the existing structure. How do you harmonize that?" and he said, "Let us look," and he got out a copy of the certificate which enabled the construction company, where it said that they had the privilege of strengthening the structure so as to take in the third track, and I said, "Do you think that that phrase there harmonizes with the construction, and that lets them out, and the mere matter of strengthening?" and he said, "Yes" he did, and I said, "That seems to be stretching it a little," and I said, "You haven't brought this to the attention of the Commission?" and he said "No," and I said, "That is all I can do to the matter. This letter has been here pretty near two months now, and we would like to have this matter adjudicated, because it is a very serious matter for the city of Brooklyn, and we have made the statement here that we represent a thousand property owners, and that the city will at least lose four hundred thousand dollars a year in taxes, and will be twenty million dollars in property values hurt, and these questions should come up to the Public Service Commission." "Well," he said, "they have all been adjudicated, and they have passed on the plan, and I don't think it is any more use," and I said "That is all I can do in the matter, and will you write me a letter what your stand is on the matter, so I can bring it up and report to our association?" and he said "Yes," and he did, and I think it was the same day that I was over there, he wrote me this letter here of which this is a copy.

Q. The letter you have been talking about, was that letter written under instruction of resolutions of your association? A. Yes, sir.

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Q. Did you at the time you had your interview with Mr. Whitney request him to place this matter before the Commission? A. I asked him why he hadn't.

Q. But you did not then ask him to again call the attention of the Commission to these matters? A. He said it was no use.

Q. Don't you think you had better read that letter into the minutes, if you are going to read the reply? A. Yes, sir.

Mr. Kornder read the letters referred to in evidence, the first being a letter from P. J. Kornder, president, Fulton Street Anti-Third-Track Association, to the Honorable Board of Public Service Commission for the First District, dated Brooklyn, January 22, 1915, which is as follows:

FULTON STREET ANTI-THIRD-TRACK ASSOCIATION

Brooklyn, Jan. 22, 1915.

To the Honorable Board of Public Service Commission for the First District, N. Y.

Gentlemen.— Our association represents about 1,000 property owners and tenants on or near Fulton street, Brooklyn, and would further state that a large majority of people in the same section are unalterably opposed to the style of structure now rebuilding on Fulton street under the guise of "Third tracking the Fulton street elevated road" which is not in accordance with the proposition as explained at the time the dual contracts were under consideration nor in accordance with the language of the consents given.

We believe your Commission has made a serious error for the city and especially for this section in approving such plans, as such a structure with its damaging effect is not in the interest of the city, many expert real estate men are willing to testify that the damage to that section in property values will be not less than 20 millions of dollars and probably reach 40 millions which the property owners must lose, and the city will lose at least $400,000 in taxes per year. This certainly is not good business for the city.

We further claim that the Municipal Railway Co. misrepresented the style of structure to property owners to get their

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consents, and further that the structure as is now rebuilding is not in accordance with the language of the consents given by property owners, and on which you base your approval of plans, in support of which enclosed please find copies of letters from property owners, the originals which we have in our possession.

We demand therefore that the construction work on Fulton street elevated road be stopped at once, the consents investigated at the city's expense, because the procuring of such consents by the R. R. Co., is according to the contract payable by the city, and if our contention be found true, all contracts and construction work be held in abeyance for adjudication.

We further believe that the best interests of the city demand that a subway be substituted for this elevated structure and connected with the existing 4 tracks of subway now pointing up Fulton street, which were intended for this populous and largest taxpaying district, as a matter of good business for the city at large.

If your Commission desires more specific data and argument we would be pleased to attend any hearing on this very important matter so set by your body at an early date, and furnish convincing reasons for our claims.

Hoping to be favored in this matter, and in the interest of a large part of Brooklyn borough citizens, and an ever growing interest and sentiment in favor of our proposition as scantily outlined.

We remain, very truly yours,

P. J. KORNDER, President.

Fulton Street Anti-Third-Track Association.

Mr. Kornder also read in evidence letter addressed to himself and signed Travis H. Whitney, dated New York, March 1, 1915, as follows:

New York, March 1, 1915.

P. J. Kornder, Esq., President Fulton Street Anti-Third Track Assn., 983 Fulton Street, Brooklyn, New York.

Dear Sir.— With further reference to your letter of January 22, 1915, concerning which you spoke to me at this

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office, I have to state that the right to construct a third track on the Fulton street elevated, including the necessary reconstruction, is granted by a certificate dated March 19, 1913, copy of which I enclose herewith. Preceding the granting of this certificate the Public Service Commission held a number of hearings, of which due notice was given by advertising and otherwise. In addition such certificate was approved by the Board of Estimate and Apportionment and by the Mayor of this city. I find, upon inquiry, that the detail plans for the third-tracking and reconstruction have not yet been approved by the Commission.

So far as the consents of the property owners are concerned, they were submitted to the Commission for examination and it was found that a majority of owners of property abutting on Fulton street consented to the third-tracking.

So far as your suggestion with reference to the substitution of a subway is concerned, it should be borne in mind that this is very largely a financial question and that the Board of Estimate now has before its committee on transit the suggestion for such a substitution.

Very truly yours,

TRAVIS H. WHITNEY,

TWH/JJT Secretary.

Encl.

Chairman Thompson.— Mr. Whitney assumed to handle this situation without taking it up with any Public Service Commissioner at all?

Mr. Kornder.— Yes, sir.

By Mr. Shuster:

Q. Did you understand from Mr. Whitney at that interview this whole matter was closed so far as the Commission was concerned? A. Yes, sir.

Q. And any further consideration of it would not be as by the Commission? A. No, sir. He said they had the matter of the subway under consideration, and he said, "I am trying my best

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to help you people over there, and I think you will be all right yet, and you will get something."

Chairman Thompson.— But he declined to bring this matter before the Commission?

Mr. Kornder.— Yes, sir.

Q. Have you had any results of that assurance up to date? A. No, sir.

Q. Have you had any other interviews or dealings with Mr. Whitney since that time? A. I have at various times spoken to him.

Q. In regard to this matter? A. No, sir.

Q. Nor in any way with reference to the Fulton street construction? A. Yes, sir.

Q. Do you care to state what those interviews were? A. There was nothing serious of any kind.

Q. Did you have any interviews or dealings with any of the other members of the Commission or its officials? A. Yes, sir, I attended several of the meetings there at the Public Service Commission, and also attended a meeting where there were present Mr. Shaw and Mr. Carpenter and myself and Chairman McCall, and afterwards the representatives of the Brooklyn Rapid Transit Railroad Company, Mr. Williams, and so forth.

Q. That was in relation to what proceeding? A. Yes, sir, and Engineer Turner.

Q. That was a proceeding in this matter? A. Yes, sir.

Q. Do you recall when that was? A. No, sir, I don't remember that. It seems to me it was in the fall of 1915.

Q. Is there anything in connection with that hearing that you think would be of interest to this Committee? A. Yes, sir.

Q. Will you state it? A. We were trying to get the Commission to see things our way, and Chairman McCall was in the chair and it was kind of an informal meeting at which everybody could speak, and President Williams had his little say, and they called Chief Engineer Turner in, and it did seem to me, and of course those were my conclusions, that the side of the people was not taken care of, and all Mr. Turner spoke of was his anxiety to get

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this structure built, and our anxiety to save our property and the city four hundred thousand dollars a year did not seem to enter into it at all, and his anxiety was to get the structure built, and he says, "This thing has been hanging fire, and they are bothering us, and want the thing done, and it should be pushed."

Q. Who did he mean by "they?" A. The Brooklyn Rapid Transit Company or the New York Municipal Railway Company.

Q. Did he mention them by name? A. I don't know that he did. I wouldn't say, but they were all in the room at the time.

Q. They were representatives of the Brooklyn Rapid Transit, and they were urging expedition in the construction of the work? A. Yes, sir.

Q. And you and your associates were urging that there be no construction carried on? A. That an up-to-date and not an obsolete thing be put through in the most populous part of the city.

Q. Did the Commission take any action or indicate what action they would take as a result of that conference? A. Chairman McCall said, "I am against elevated railroads, and if you can get the money, we will see what we can do."

Q. How long ago was that conference, approximately? A. I think it was in the fall of last year.

Q. Is there anything further you want to state to the Committee in regard to your dealings with Mr. Whitney or Mr. Turner, or any other of the Commission's employees? A. No, sir, only I wish to say that I do not think we got very good consideration from the Public Service Commission, it did not seem so to me.

Q. You were not satisfied with the results? A. Not as a business man. It does not seem to be a good business proposition.

Q. Are you a member of the Committee of One Hundred? A. Yes, sir.

Q. And you are well acquainted with the members? A. Yes, sir, very well.

Q. Mr. Carpenter is a member of the same Committee of One Hundred? A. Yes, sir.

Q. Would you say that he was influential in that committee? A. Very.

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By Mr. Harkness:

Q. What are the positions of Mr. Shaw and Mr. Cranford on that Committee of One Hundred? A. Mr. Shaw is president, and Mr. Cranford, I think, vice-president, or engineer. He advises them on the engineering part.

Q. They are large and moving spirits in that committee? A. Yes, sir.

Q. Did you hear their statements yesterday repudiating Mr. Carpenter's attack on Mr. Whitney? A. No, sir.

Q. Referring to the letter of January, 1915, which you spoke to Mr. Whitney about, and you have produced a letter in reply, didn't you subsequently get a letter from Mr. Whitney advising you of a public hearing before the Public Service Commissioners in this same matter? A. Not that I know of.

Q. The letter may be on file? A. Yes, sir, it may be.

Q. Haven't you appeared on the hearings of the Public Service Commission? A. Yes, sir.

Q. Haven't you advanced some of the arguments advanced in that letter? A. Yes, sir.

Q. And you have heard Mr. Carpenter advance them? A. Yes, sir.

Q. And you have not been deprived of having your views directly presented to the Public Service Commission? A. When these things were brought up afterwards, we were always told we were too late.

By Mr. Shuster:

Q. By whom were you told that? A. This letter states the plans had not been approved as yet, of March. The detailed plans had not been approved, and we did not think we were too late. We had our business to attend to, and we could not be on the jump all the time. The things have been changed, and even after they passed the final plans. As I told Mr. Prendergast, he said it was too late, and I says, "The president says it is never too late to change for the right."

Chairman Thompson.— It has not been too late, unless within the last few days.

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By Mr. Harkness:

Q. Do you know that prior to the date of your letter of January, 1915, the same arguments and same matter contained in that letter was presented to the Public Service Commissioners? A. No, sir, I don't, not by our association anyway.

Q. What is your association? A. Fulton Street Anti-Third-Track Association.

Q. Do you know about the other associations? A. Yes, sir.

Q. Do you know whether they presented the matters to the Commission? A. I don't know.

Q. Didn't you know public hearings were held in 1913, when the third-tracking first started? A. I am so advised.

Q. And weren't those questions in litigation at the time that letter was written? A. I don't know whether Judge Brown passed on the question of consent there. We said they were illegal and wrongly obtained and we wanted to draw the attention of the Commission to that fact.

Mr. Harkness.— Mr. Carpenter and his people have been asking various questions which have to do with the litigation now pending, and I do not know to what extent I am at liberty to ask questions about that.

Chairman Thompson.— I want to say I have read Judge Brown's opinion, and I think it is a very weak one, and when the taxpayers have to fight these matters, I am informed in order to appeal from that decision they have to put up $20,000, and that puts them in a very peculiar situation, and one from which they should have some relief, and I do not lay too much stress on the fact this matter has been decided by Judge Brown. Judge Brown asked for an extension to January 1st, and suddenly made a decision, and with all of those facts before me, I feel that the fact that he has made a decision should not be given too much weight. My mind is open to any further suggestion in that respect, but I do not like to in this matter foreclose these people, because Judge Brown, a referee, has made a decision of the kind he made under the circumstances he made it.

Mr. Harkness.— A statement has been made about matters pending.

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Chairman Thompson.— I think the taxpayers over there would have been much better treated and the law would have been much better expounded if they allowed the attorneys for the Public Service Commission to have passed upon it.

Mr. Harkness.— It is very surprising to have praise from the chairman of this Committee for the counsel of the Public Service Commission.

By Mr. Harkness:

Q. Mr. Kornder, who asked you to go and see Fred C. Williams to get him to act as plaintiff in that pending suit? A. Mr. Carpenter.

Q. Do you or do you not know that before Mr. Williams verified the complaint in that case that somebody entered into an agreement with him that in consideration of his verifying that complaint he would be protected and saved harmless from all costs and expenses? A. Do I know it now?

Q. Yes. A. Yes, sir.

Q. Who was it? A. Mr. Haviland.

Q. Anybody else? A. Not that I know of.

Q. Did Mr. Haviland ask you to see Mr. Williams? A. No, sir.

Q. How did you get in touch with Mr. Haviland? A. I didn't get in touch with him.

Q. Who did you take Mr. Williams to? A. Robert Stewart.

Q. You had no further dealings after that? A. I was interested in it.

Chairman Thompson.— I put in evidence a brief or statement made by Mr. Whitney and Mr. Harkness, assistant counsel to the Public Service Commission, which was furnished this morning.

The same was marked Exhibit A of this date.

Chairman Thompson.— I made some criticism of the counsel of the Public Service Commission, and my criticism is only of the counsel's department as a whole, and I do not believe they have been permitted to represent the people and issues before the Public Service Commission to the extent that they should have

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been permitted to participate, and I think they should have been permitted and required to participate further than they have.

Mr. Harkness.— I think, in justice to the Commissioners, so far as I am concerned personally, I have had the fullest opportunity from every Commissioner there.

Chairman Thompson.— I do not think it has been availed of then. I do believe the attorneys provided for the Public Service Commission should represent the people's side of any controversy that comes up, as the attorneys of the public utility corporations also are paid by the people, and that is the fact, regardless of how it is taken out of the people to pay it. The consumers pay it, and it is added to the expenses in fixing a rate, and therefore they represent the one side and the attorneys for the Public Service Commission should represent the other, and get both extremes before the Public Service Commissioners, and they will find somewhere in between will be the wise and proper course, and can pursue it.

Mr. Carpenter.— Along the lines of your thought, under the dual contracts involving the B. R. T. interests with the city, all the costs of this litigation against the property owners, as I understand it, go into the preferential fund, and is a direct reduction of the earnings available for the city, and for every dollar we can put up, they can put up thousands.

Chairman Thompson.— We will take this up next Thursday, if desired.

ALFRED CRAVEN, being first duly sworn, testified as follows:

By Mr. Shuster:

Q. Mr. Craven, you are the chief engineer of the Public Service Commission of the First District? A. I am.

Q. And have charge generally of the engineering problems before that Commission? A. I am the executive head of the engineering department of the Commission.

Q. Have you given personal attention to the subway construction? A. I have to a certain extent.

Q. Now, in connection with the subway construction, did the original plans for the subway call for pipe galleries? A. Not under the dual system.

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Q. Were they afterwards specified? A. Never.

Q. Never have been specified? A. The only pipe gallery construction we ever had was in building the Center street loop, and there they specified pipe galleries, and afterwards on the Fourth avenue construction.

By Chairman Thompson:

Q. What is that pipe gallery? A. It is to have in the streets a large gallery in the form of a tunnel or something in which different public utilities can be placed.

Q. What do you mean? A. Ducts for cables, and gas pipes, and water pipes, and mail tubes, and anything of that kind, any sub-surface structure that is now scattered promiscuously through the streets, and the idea was by having a well-organized system of galleries, all the utilities could be placed in the galleries and get at them without digging up the streets. They were put in the plans for the Center street loop and partially constructed.

Q. What was the reason they didn't finish the construction? A. In canvassing the situation, we found we could not get anybody to put their utilities into them.

Q. Who did you ask? A. I discussed it myself with some of the members of the water department, and I cannot recall who, and also with the engineers of the gas company.

Q. Anybody else? A. I discussed it with different engineers in the city department.

Q. We intended to go into that pretty thoroughly to-day, but it is getting late. A. Personally I was very strongly opposed to it, and I think they are dangerous.

Q. Why dangerous? A. Gas and electricity do not work well together. I could go through the whole situation. We looked up the matter as to what had been done abroad in that matter, and finally the conclusion was it was not best to have them, especially when it was considered at the time that the different departments did not wish and would not put their utilities in those galleries.

Q. They were not constructed, anyhow? A. No, sir. We constructed one short stretch on Delancey street, and it is there to-day, a nuisance.

Q. Would it be impossible to put them in the subways now? A. It is impossible now. There was another thing about pipe

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galleries, in order to get pipe galleries in, it would have required a further depression of the subways, which would be enormously expensive.

Q. We are coming back next Thursday morning, and I wish you would refresh your recollection about it, so you can give us information about it at that time. A. Yes, sir.

Q. We will excuse you until Thursday morning at 11 o'clock. A. Yes, sir.

Chairman Thompson.— We will suspend now until next Thursday morning at 11 o'clock at this same place.

Whereupon, at 2 o'clock P. M., an adjournment was taken to 11 o'clock A. M., Thursday, January 20, 1916.

JANUARY 20, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order pursuant to adjournment, Chairman Thompson presiding.

Quorum present.

Chairman Thompson.— I have just received a telephone from Mr. Whitridge, and he said he was ready to come before the Committee at once, but he went to lunch at 1 o'clock, and he hated to interfere with his lunch, and I felt sorry for him, and for that reason I have agreed he should be here at 2 o'clock, and he has agreed to be here at that time.

ALFRED CRAVEN, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Craven, do you happen to be acquainted with Mrs. DeForest? A. Yes, sir.

Q. How long have you known her? A. I cannot recall. I have met her in the office once, probably six or eight months ago,

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and she has been with the Commission some little time. I don't know just how long.

Q. Will you tell us what her position is with the Commission? A. Assistant engineer, I think, in the designing department, or designing engineer.

Q. Will you tell us what her salary is? A. I don't know.

Q. Was she appointed by you? A. No, sir.

Q. Who made the appointment? A. I think she came from the Civil Service list, in the regular order of appointment.

Q. But even taken from the Civil Service list, the appointment has to be made by some one? A. Made by the Commissioners.

Q. She is in your department? A. Yes, sir, she is in my department.

Q. Have you known of the fact that she claims to have been ousted from the American Society of Civil Engineers? A. I have heard of that.

Q. And have you known of the fact that she was refused membership as an associate engineer? A. I have so heard.

Q. And have you known of the fact that the refusal was based upon the ground that she was not competent or qualified to be an associate engineer? A. I am not familiar with the facts.

Chairman Thompson.— Are you a member of that association?

Mr. Craven.— Yes, sir; that is a matter that is handled by the managers of the association, and I know nothing about it.

Q. In a newspaper story published January 19th, appears the statement that Mr. Henry W. Hodge, of the Public Service Commission, is quoted as saying that "her professional qualifications were the only things taken into consideration in my vote," and tells after that he voted against admitting her to associate membership; did you know of that fact? A. I have no knowledge of those matters at all. I should say that a number of years ago I was on the Board of Governors of the American Society myself when the qualifications as to membership came up and inquiries were made, and if persons were found qualified they were so qualified by the board. I think as far as qualifications of membership are concerned, that they would not apply to her ability as to the

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place she is working at the time, but as to her general qualifications, but as to this particular case I know nothing except as I have seen in the newspapers.

Mr. Lewis.— For the purpose of the record, Mrs. Blatsch's full name may be given, and it appears from the newspaper article it is Mrs. Nora Blatsch DeForest.

Q. When you were on the stand last Saturday, I think, Mr. Craven, you were asked something about the pipe gallery situation? A. I was.

Q. Have you informed yourself upon the subject now, so that you are prepared to give evidence? A. I have looked over the records generally in the office.

Q. Is it a fact that there was a statute enacted by the Legislature a number of years ago compelling the introduction of pipe galleries in the subway system? A. Not that I am aware of. The Rapid Transit Act provides that the Rapid Transit Commission may build pipe galleries, but it is not mandatory, I understand.

Q. Do you recall when that was put into the Rapid Transit Act? A. I think it was in the original act, in 1891 or 1892.

Q. Later on wasn't there a mandatory amendment that was enacted by the Legislature compelling that? A. I don't understand anything of the kind has ever been enacted.

Q. Were you connected with the Rapid Transit Commission during its existence? A. Yes, sir.

Senator Towner presiding.

Q. As engineer? A. Yes, sir. The Rapid Transit Act will speak for itself, I suppose.

Q. The Commission has not, generally speaking, has not built pipe galleries in the subways, has it? A. They have not.

Q. Will you tell us what you may of the reasons for the failure to build them in the subways? A. Well, I cannot say that I know their reasons for not building them. I think I might say in a general way, way back in 1895, when the rapid transit, original rapid transit subway was under consideration, the question of pipe galleries was taken up, and I believe they were included in the original plans. I believe that from reading the

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records that the general feeling of everybody was that pipe galleries would be a good thing, and that they would be a great help to the street, and for other reasons be an excellent proposition. As I have read the records, although I did not have any particular part in it myself, as time went on, and the matters were further considered, there was a gradual reversion of feeling in reference to this, that while it was claimed to be beneficial, that the cost was one that had to be considered, and also that there were other elements and questions that were raised that caused the drift of feeling, I think, to run against them, and while they were considered time and time again, the final result was that they were ordered not to be built by the Commission.

Q. Was the use of pipe galleries favored or opposed by the electric lighting and power company?

A. I think at first, as I said, there was a general tendency to favor it by everybody. I don't know just what the different companies, what position they took. The gas company did oppose it, and also the Commissioner of Water Supply, Gas and Electricity of the city opposed placing their water pipes in the galleries. I do not know what the attitude of the electric light people was.

Q. To diverge for a moment, Mr. Walker tells me that Mrs. DeForest is on the payroll of the Commission as an engineering assistant at a salary of $1,650 per year; have you any information on that subject? A. I suppose that is from the record.

Q. But you think the gas companies were opposed to it? A. They were in a way opposed to it. As I understand, they took the ground their main opposition was on the ground of danger. I do not think they had any other real opposition. There were questions raised as to who should stand the expense of changing their pipes from the streets to the galleries, and I think those matters were finally referred to our counsel to take up and report to the Commission.

Q. You were familiar with the whole subject at the time it was agitated, were you not? A. Not at first. I was first brought into the matter directly in 1910, when Mr. Seaman was chief engineer, and he had a conference with the engineers with reference to the

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advisability of building pipe galleries, and he asked me to make a report to him, which I did.

Q. Was that report in writing, Mr. Craven? A. Yes, sir.

Q. Do you recall the substance of it? A. A number of the engineers, I cannot recall now just who they were, division engineers and others, were asked into a conference by the chief engineer, Mr. Seaman, and among other things discussed was the question of the advisability of building pipe galleries, and we were finally asked to make individual reports on it, but in conference, however, there seemed to be a general unanimity of feeling in reference to pipe galleries, so we made a combined report, the substance of which was all the advantages claimed for pipe galleries in regard to saving tearing up the streets, in our opinion, were not good, and they took up so much room in the streets where subways were being built, they would add very materially to the cost of the subways themselves; that the main objection, however, from my point of view, and I think the others, was that they were such a menace to life in the streets that they should not be approved. My own opinion was I'd just as leave have a string of dynamite magazines along through the streets in New York as pipe galleries with gas and electricity in them, and I still have the same opinion.

Q. Was the question of municipal ownership involved there in any way? A. No, sir, not that I recall.

Q. It was proposed, was it not, that the pipe galleries should be the property of the city ultimately, by the construction of the subway? A. As to the pipe galleries, it was understood, and I believe the act provides, that if the owners placed their pipes, and so forth, in the galleries which they had a right to do, that they should pay a small rental, sufficient to maintain the gallery. The city would own the galleries.

Q. Sufficient to cover the interest on the investment? A. I presume that would be what it would amount to.

Q. Were any pipe galleries constructed in the subway system? A. Only a very short stretch of pipe galleries constructed on Delancey street.

Q. For what purpose have they been used? A. Not at all.

Q. For what purpose were they intended? A. To place the

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sub-surface structures in there by anybody that had a mind to do it.

Q. Electric conduits, and such as that? A. No, sir, not electric conduits. The question was one, according to my recollection, of not putting electric conduits in there. There were one or two conduits placed, but they have not been used, as far as I know.

Q. Electric cables were intended to be used in the galleries? A. The general plan of the pipe galleries contemplated a certain number of ducts in which cables would be drawn.

Q. And none have ever been installed in this gallery that was constructed? A. Not that I am aware of.

Q. How extensive a construction has been put in in Delancey street? A. I don't recollect that, a couple of thousand feet. Mr. Green, do you recollect about that?

Mr. Green.— That is about right, I think.

Q. Do you recall the approximate cost? A. I do not recall the cost.

Q. It is an expensive construction? A. Yes, sir, any construction of that kind in the street is expensive.

Q. A thousand dollars a mile, or ten thousand? A. What we constructed in Delancey street would be more than ten thousand dollars a mile. I do not know exactly what. We generally felt if we attempted to construct pipe galleries along the lines of our subways, it would cost probably in the neighborhood of five hundred thousand dollars a mile.

Q. And the two thousand feet may have cost as much as two hundred thousand dollars? A. I would not like to answer that question. The matter is on record, and I can get you the question of cost if you wish it.

Mr. Harkness.— In covering the cost of pipe galleries, account is taken of the additional cost of the subway, because of the necessary depression to get the pipe galleries in, and I would suggest that you ask Mr. Craven if he took in that in the figures he gave as to the cost of the depression of the subway.

Mr. Craven.— Yes, sir, that is it. It would cost the city or somebody to get the gallery in; not the cost of the gallery alone.

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Q. Do you recall what Chief Engineer Seaman's attitude was on the subject of pipe galleries? A. Yes, sir, he was rather inclined to favor them at first, and he gradually drifted away from them, and finally advised the Commission they should be omitted.

Q. It was claimed the city should be able to derive a substantial revenue from the construction of pipe galleries, wasn't it? A. I never understood it so. My understanding was they were to receive from the companies a sufficient amount to cover the cost of the maintenance of the galleries, and, as far as the city fixtures, such as pipes, I don't see how they could derive any benefit from that, unless they took it out of one pocket and put it in another.

Q. It was claimed the construction of pipe galleries would serve to prevent the disturbance of the street surface, to a very large extent? A. It was so claimed, yes, sir.

Q. Was that regarded as a matter of any particular importance? A. It was considered, and it was finally concluded, so far as the practice was concerned, and I recollect making some estimate, there would not be any great saving, even where the galleries were located, and there would still have to be more or less tearing up of the streets and in estimating the cost of the gallery, I remember that the interest on the capitalization would probably lay a new pavement about every seven years, and there was probably nothing to be gained by it. There is a large difference of opinion about that, and still exists.

Q. There is still a sentiment in favor of the construction of pipe galleries, is there not? A. I don't know whether there is or not.

Q. Was it originally contemplated to permit the installation of a pneumatic tube service in the pipe galleries, if constructed in the subway? A. I presume that would have been one of the structures that would have been taken care of. The only thing I recall about pneumatic tubes was, I believe, the company took it up once with the Commission and also with the railroad company, with the possibility of getting their tubes placed in the subway. If the galleries were built of sufficient size, undoubtedly the tubes could go in, and all structures go in, but it would be practically as big as the subway, or nearly so, if you wanted to put everything in the streets of New York in there.

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Q. Was there serious opposition to the pneumatic tubes? A. I don't know anything about any special case of the pneumatic tubes.

Chairman Thompson presiding.

Chairman Thompson.— In conversation with Speaker Sweet of the Assembly yesterday, he said to me that the Assembly would not consent to a continuance of the investigation which the Joint Committee of the Senate and Assembly has been conducting.

The Senate yesterday unanimously agreed to an extension of the life of the Committee, and agreed to an additional appropriation to enable the payment of the expenses which the Committee has already incurred.

The action of the Senate is, of course, ineffective without the concurrence of the Assembly.

In the opinion of the Committee, there are numerous important matters which should be investigated by this Committee. The work which the Committee has done, and the results which the Committee has accomplished, have, in the opinion of the Committee, justified its existence, and, it would seem, would amply justify its continuance.

This Committee is, however, unwilling to incur expense with no prospect of payment. If the Assembly of the State can afford to throttle the Committee's activities, it must take the responsibility for so doing. The Committee feels that it would be imprudent, under the circumstances, to incur any additional obligations so long as the attitude of the Assembly remains as it now is.

Mr. Craven.— I thought it might give you an idea of what the situation is, and there is an enlarged photograph of one little stretch of a few hundred feet near a street crossing. (Exhibits photograph to the Committee.) If you attempt to build a pipe gallery, you have to adjust it to take care of all of that mass of material, and that is common to most of the Manhattan streets.

By Mr. Lewis:

Q. Is this in any degree an exaggerated or greater than the average, or is it an average? A. No, sir, it was taken by the contractor himself, showing where he was handling the steam pipes

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in that district. That is at Dey street and Church street, looking east toward Broadway.

Q. It is near by us here? A. Yes, sir, that is taken some little time ago. It is not quite that condition now. I can show you some more intersections that might be interesting, and I think it would be fair to look at them, because people haven't any idea what this means. Of course, a photograph is better than anything else, but here is an intersection of Broadway and 21st street. All that confusion you see in there are pipes of all kinds.

Q. I suppose the gas mains are many more than anything else? A. If I make a suggestion, I would say that if the Legislature could help us to get rid of about two-thirds of the gas mains of the streets, New York would be better off than anything else.

Q. In what way might the Legislature be useful in that effort? A. I think they might permit the gas companies to arrange their affairs so they could get together and not be working at odds all the time.

Q. Do you mean by that there are duplications of lines in the streets? A. Yes, sir, some places eight or ten gas mains in the street, where one or two would serve all the purposes necessary.

Q. But are not the gas companies practically under one control in Manhattan? A. I believe they are consolidated under one control, but I think there are different franchises that have to be considered. Their accounts are kept separate and you cannot — I believe the law prohibits them from consolidating in such a way they could get rid of these conditions.

Q. Let us get down to concrete facts; isn't the Consolidated Gas Company in control of the gas situation in Manhattan? A. Absolutely, I think.

Q. Isn't that control due to the fact the Consolidated Company owns all of the other companies? A. I don't know if they own them. I don't know just what their relations are. I don't think they actually own them, no. They may control the stock.

Q. You have no information as to whether or not they do own the stocks of those various companies? A. No, sir, I don't know just how their control is. I don't know just exactly what it is, but I understand that they are prevented from doing certain

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things, or consolidating in certain ways, by their franchises, which prohibit their actual consolidation.

Q. Franchises originally granted by the city containing conditions? A. Yes, sir, which prohibits them from actually combining in consolidation in such a way that would permit them to get rid of many of these troubles.

Q. You don't think there is any competition among those companies? A. No, sir, I think competition is all gone.

Q. I assume you know a corporation owning all the stock of another corporation is authorized under the law to merge that other corporation, so that it ceases to exist? A. I don't know that, I should have gone into that department, but my idea in my inquiries about matters in asking them, "Why can't you get rid of this pipe?" or that, and they say, "Under the original franchises of the different companies, we are prohibited from cutting those pipes out, and we have to keep them in service in order to have a proper accounting between the subsidiary companies."

Chairman Thompson.— We will suspend now until 2 o'clock, and Mr. Craven may appear at that time, if he will.

Whereupon, at 1:15 o'clock P. M., a recess was taken to 2 o'clock P. M.

AFTERNOON SESSION

Chairman Thompson presiding.

Chairman Thompson.— I think, Mr. Whitridge, you appeared before this Committee at one time, but I think you were not sworn at that time.

Mr. Whitridge.— I don't remember.

Chairman Thompson.— I think that you were asked, at that time, with a number of other gentlemen, to come before the Committee and give your views, and I do not think we treated you as a witness.

Mr. Whitridge.— I don't remember.

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FREDERICK W. WHITRIDGE, being first duly sworn, testified as follows:

By Mr. Lewis:

Q. Mr. Whitridge, I notice in your letter of January 12th, addressed to this Committee, or its Chairman, you mention various lawyers whom you have employed from time to time, and the amounts paid to them; I don't find in the list the names of counsel employed by the Third Avenue Company in the case against the Public Service Commission, People ex rel. Third Avenue Company against Wilcox. A. I think so. I don't know of any counsel we have employed except those whose names I have given you. There may have been something, I don't know of it, however.

Q. Didn't Mr. Guthrie represent the Third Avenue Company in that case? A. Mr. Guthrie represented the Reorganization Committee before this company was organized.

Q. He argued in support of the contention of the Third Avenue Company, did he not, in the Appellate Division? A. In the Wilcox case?

Q. Yes. A. No, not as I recollect it.

Q. Wasn't he in the case, the People of the State of New York ex rel. Third Avenue Railway Company, James W. Wallace and others, as a bond-holders' committee, relators, against the Public Service Commission for the First District of the State of New York, William R. Wilcox and others as Commissioners, or members of such Commission? A. What case was that?

Q. I think this is the case that got in some way or other the name of the Rubber Stamp case; does that bring it to your mind now? A. Yes, sir; Guthrie had nothing to do with that.

Q. The decision shows that Mr. Guthrie was of counsel in that case for the relators, but does not show which relator he represented. A. It is perfectly true, but does it appear that this was before the reorganization? Mr. Guthrie represented the Bondholders' Committee.

Q. Was Mr. Guthrie employed by the Third Avenue at that time? A. The Third Avenue was not in existence.

Q. It was in the hands of a receiver? A. Yes, sir, and I was the receiver, and the bondholders had a committee which at some

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time took some action and Guthrie represented the bondholders in that case, if I remember rightly.

Q. Were you as receiver co-operating with the bondholders in the attempt to secure the approval of the Public Service Commission to the proposed plan of reorganization? A. Yes, I was.

Q. Then Mr. Guthrie was really helping to sustain that plan in which you as receiver were a party, was he not? A. I had nothing to do as receiver with the plan of reorganization.

Q. Well, as an individual? A. I have forgotten exactly how I appeared there; as custodian of the property, I suppose, but Guthrie represented the bondholders.

Q. You were interested in bringing about the reorganization? A. I was only interested, I had got through with my job, and I wanted it wound up practically. I had no other interest or purpose than that.

Q. Were you in any way a party to the reorganization agreement, either individually or as a receiver? A. No, sir, no interest in that at all. I may possibly — I don't think I did, I may possibly — I don't think I did. I might have had some of the underwriting. I don't think I did.

Q. Will you tell us how the Third Avenue Company, which was a party to this litigation, was interested in accomplishing the reorganization provided for in the agreement which the Public Service Commission refused to approve? A. I should have to read that case over again, and I wouldn't undertake to do it here before you. The Third Avenue Railroad Company passed into the hands of a receiver eight or nine years ago, and after more or less put in order the bondholders formed a plan or reorganization, and apparently this was before, this case was before the property was sold under the foreclosure and the new company organized and the old company must have been a formal party to it. It was sick, and about to be foreclosed, and was foreclosed, and the new company came into existence I think in January, 1908.

Q. Had you any connection with the Third Avenue prior to the time of your appointment as its receiver? A. No, sir, I had been, I won't say retained, but I had been asked some years before, at the time of the first receivership, to look into it on behalf of some bankers, and I did so, but nothing came of that.

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Q. How long did you operate the road as receiver? A. From the time of my appointment down to the first of January, I really forget the date, I think 1911, when the new company came into existence.

Q. Two or three years or less? A. Four or five years.

Q. And the reorganization plan contemplated not only the acquisition of the Third Avenue line, but various other lines, did it not? A. What was called the Third Avenue system was the number of railroads, the stocks owned by the Third Avenue, and I think twelve or fifteen companies all together, roughly speaking, known as the Third Avenue. There was separate receiverships for two or three of them, and always known as the Third Avenue Companies, and the interests identical.

Q. The question before the Public Service Commission was the approval by that Commission of the stock and bond issues proposed by the reorganization committee, was it not? A. Proposed to be issued by the new company and under the plan approved by the reorganization committee.

Q. And that was denied, I am advised? A. Yes, sir.

Q. Upon the ground that the proposed capitalization would take the place of capital issues for which an inadequate consideration had been paid at the time they were paid, is that true? A. I think I am telling you the truth when I say I have never read the opinion of the Public Service Commission in reference to that case. The Public Service Commission at that time had a maggot in its mind about valuations, and they had all kinds of opinions, and the first plan was rejected and subsequently modified, and was approved by the Court of Appeals, and I think the Public Service Commission were rather vexed at the Court of Appeals, although I should not say that.

Q. Were you in any way a party to that litigation in your individual capacity or as receiver of the Third Avenue Company? A. I had no part in the litigation at all except so far as my being a receiver is stated. I was the custodian of the property and I presume in some formal way I got there.

Chairman Thompson.— You were a party as receiver?

Mr. Whitridge.— Yes, sir, as receiver.

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Q. Mr. Guthrie did not represent you as receiver or individually? A. No, sir, he represented the bondholders.

Q. Did Mr. Victor A. Morawetz, do you remember his connection with the case? A. I only remember when the mortgages were prepared, Mr. Morawetz was a friend of Mr. Guthrie's and he went over them, and I think I had conversation with him on one occasion.

Q. Do you remember any connection Mr. Herbert J. Bickford had in the case? A. Yes, sir; Evarts, Choate and Sherman were my counsel.

Q. Bickford was in that case as your counsel, was he? A. Yes, sir.

Q. Did he participate actively in the preparation of the case or its argument? A. I cannot tell you that. I do not think he took part in the argument.

Q. Did he appear for you before the Public Service Commission? A. All my appearances before the Public Service Commission were through Bickford or members of his firm.

Q. And he is a member of the firm of Evarts, Choate and Sherman, is he? A. I think it is Sherman now.

Q. Evarts, Choate and Sherman? A. That is my recollection.

Q. I notice that you state in your letter that you paid to Evarts, Choate and Sherman for services rendered before the Public Service Commission and various city departments, and for appearing twice before legislative committees, $5,233.97? A. If you read it that way, it is a mistake. That was the amount of the bill which they rendered for this year.

Q. That is for 1915? A. Yes, sir, and the appearances before the Legislature were some years ago. Mr. Choate went up and opposed some proposition of the Public Service Commission, and they proceeded to say something about the Black Horse Cavalry been engaged. I talked to Mr. Choate about being an officer in the Black Horse Cavalry, and he laughed.

By Chairman Thompson:

Q. Did you know what was meant? A. Yes, sir, I was counsel for a Senate committee at one time.

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Q. Let us have a definition of the Black Horse Cavalry. A. This is not authority. The Black Horse Cavalry, as I understand, referred to a lot of volunteers or mercenaries engaged on behalf of corporations, as a rule, to labor in the Legislature.

Q. What were they? Members of the Legislature or not? A. That I cannot tell you. They were people of some kind.

Q. That is the extent of your information? A. I personally never had anything to do with any black, white, or other kind of horse cavalry that had anything to do with the Legislature, except one time I acted as counsel on a Senate committee.

Q. When was that? A. Twenty-five or thirty years ago, in the eighties.

Q. How long ago since you met any member of the Black Horse Cavalry? A. I don't know as I ever met them, but I am perfectly sure Choate was not a member of it, and I thought talk about him in connection with that was infamous.

Q. Who accused Choate of it? A. Some of the papers, somebody or other, I don't know who.

Q. How long ago was that? A. It must have been six or seven years ago, shortly after the Public Service Law came into force. As soon as the Public Service Commission was instituted, they began to ask for more power.

By Mr. Lewis:

Q. This reorganization which was undertaken, was under the provisions of the Stock Corporation Law, was it not, Mr. Whitride? A. I believe it was.

Q. And it was the position of the parties to the reorganization that such reorganization might be accomplished without the approval of the Public Service Commission, was it not? A. I think following what was known as the Erie case, that was the fact.

Q. Do you recall, or have you any knowledge of the fact, that an effort was made by the Public Service Commission pending an appeal to the Court of Appeals in this case, to have the law so amended as to make it clear that a reorganization could not be accomplished except with the approval of the Public Service Commission? A. I have no definite recollection of that, but it is in the line of the endeavors of the Public Service Commission, and I have no doubt that such endeavors were made.

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Q. Did you have any part in the effort to prevent the enactment of any such legislation? A. I did not. I always took the position if the Legislature or any other public body in this State wanted to ruin a railroad, they could do it for all I cared.

Q. Did you know Governor Dix? A. I met Governor Dix upon one occasion.

Q. Did you ever discuss this proposition with Governor Dix? A. No, sir, I discussed it personally with the Public Service Commission.

Q. Are you aware of the fact that a bill pending in the Legislature during Governor Dix's term seemed likely to become a law provided an emergency message could be obtained from Governor Dix, did you know of that fact? A. The only thing I knew about that was pending before Governor Dix was a law was passed by the Legislature instituting practically free transfers all over creation, and I heard of it, and I was in Paris or London, and I cabled him as strongly as I knew how, asking him to veto that law, and he did so. We just got out of bankruptcy, and did not want to go back.

Q. Do you know William Church Osborn? A. Yes, sir.

Q. Did you have any communication with him during the time he was legal adviser of the Governor, on the subject of amendments the Public Service Commission desired to the law? A. I know him very well, but I have no recollection of any such thing.

Q. Have you any recollection of writing a letter to Mr. Osborn urging him to advise the Governor not to give an emergency message for the passage of the amendments which the Public Service Commission desired? A. I have no recollection of any such thing.

Chairman Thompson.— Can you refresh your recollection as to that by referring to your file?

Mr. Whitridge.— I might. My personal letters I do not keep a file of. If there is anything about it in the Third avenue, I could find out.

Chairman Thompson.— Would you regard a communication to the Governor of the State in reference to legislation pending which might affect your railroad, would you regard that as personal?

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Mr. Whitridge.— No, sir. I never wrote Governor Dix.

Chairman Thompson.— His reference was to Mr. Osborn, a letter to Mr. Osborn, the Governor's adviser.

Mr. Whitridge.— I don't think I wrote Osborn.

Chairman Thompson.— It would not be in your personal file, if that is so, would it?

Mr. Whitridge.— If I can find any such thing, I will, but Osborn is much more likely to keep such a thing than I.

Chairman Thompson.— Why?

Mr. Whitridge.— He takes it more seriously than I.

Q. Don't you regard it as serious when you write a letter to the Governor's adviser in reference to your railroad? A. No, sir. I have had very little correspondence with people.

Q. Can you tell us what the proposition was you had Mr. Choate in Albany on, to appear before the Committee? A. I have entirely forgotten.

Q. It was not on this amendment I speak of, was it? A. I don't think so. I think it was quite in the early days, but I have forgotten what it was. The Public Service Commission had at one time a notion that its decisions should be exempted from judicial review. I think that abhorrent proposition may have been one, but I don't remember.

Q. Do you remember what you paid Mr. Choate for his services in going to Albany on that matter? A. No, sir.

Q. Paid by the company, was it? A. Of course. Nobody else paid it.

Q. What I wondered, was it paid by the company after its reorganization, or by you as receiver before the reorganization? A. That may possibly be. I think it was paid by the company, but I am not sure.

Q. Didn't Mr. Choate go up there to argue before the Committee against the proposition to amend the statute so as to make it necessary to apply for the approval of the Commission to the plan of reorganization, and wasn't that what Mr. Choate was there for? A. I have forgotten, and when I came to write this letter,

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I telephoned to the office and said, "Did Mr. Choate once go to Albany?" and my recollection was vague about it.

Q. It has been suggested Mr. Choate was employed by you as receiver to attend the hearings before the Committee and to argue against the enactment of the proposed amendment, and that you as receiver paid Mr. Choate five thousand dollars as a fee; have you any recollection of that fact? A. I have not. I should very much doubt whether I paid any such sum.

Q. Did you ever pay, as receiver or otherwise, any fees to Mr. Guthrie in connection with the reorganization? A. I don't think I did.

Q. For appearing before the Public Service Commission? A. I think not.

Q. Would the books of the —

Chairman Thompson.—Who did pay him for his appearance in that case, the one Senator showed you?

Mr. Whitridge.— The reorganization committee.

Q. Was Mr. Bowers in your employ at any time, John M. Bowers? A. Mr. Bowers was one of the first counsel of the Bondholders' Committee.

Q. But not counsel for the Third Avenue or the receiver? A. No, sir, he has been employed by me since, as I stated.

Senator Towner presiding.

Q. It is a fact, is it not, that the law never has been amended as the Public Service Commission desired in connection with the reorganization? A. I don't know. I thought it had been.

Q. I think not? A. I don't know. I have not followed it.

Q. And if not, it is due to the fact that you employed Mr. Choate to appear before that committee to a greater or less extent, is it not? A. I should be happy to tell it, if you think so. I think he would be very pleased to think he had so much influence. I should think the controlling cause which prevented the passage of the legislation giving the Public Service Commission authority as you speak was an increase of common sense on the part of the population.

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Q. Is it your opinion then that the exercise by the Public Service Commission of supervision over Public Service Corporations is a mistake? A. No, it is not.

Q. Would you like to see that control abolished? A. I think, as things went in this State, I have repeatedly said that a Public Service Commission that should exercise regulatory functions over corporations is desirable, and the conditions existing at the time Governor Hughes signed the bill were such that it was desirable at that time, and the Public Service Commission when it gets started, or any body of people when they get started, they find themselves wanting to assert a great deal of power, and they say "Let's have more power," and they regard it as more power, more power to the body that has regulation. What the Public Service Commission I speak about needed was not more power, but more common sense.

Q. They did not have the power under the law as it was passed to supervise the capital issues of roads which were being reorganized under the provisions of the Stock Corporation Law? A. No, sir.

Q. They did have the power to supervise the capital issues of companies newly organized? A. Yes, sir.

Q. Is there any reason why they should not have the same power to supervise capital issues of reorganized companies as they had unquestionably under the law as to original companies? A. I think there is.

Q. The purpose of course, of conferring jurisdiction upon the Public Service Commission to supervise capital issues is to prevent so-called watering of stock, is it not? A. I am not able to say what the purpose of it was. I presume the Commission would say that is the object of it.

Q. Have you any opinion as to whether or not that is the purpose? A. As respects new corporations that is of course so.

Q. Is there any reason why in the reorganization of bankrupt companies and the issue of capital stocks of the reorganized companies the Public Service Commission should not have equal power as to such issues? A. I think there is.

Q. Will you be good enough to tell us for the benefit of the Committee in the revision or attempted revision of the law what

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your views are on that subject? A. In the case of a company which is bankrupt and going through the process of reorganization that work is always undertaken by the representatives who put capital into the concern. The creditors of the company are trying to get as much out of the investment as they can. So far as I know, the Public Service Commission in this State are not as competent to judge as to what the capital ought to be made to represent the capital put in as the owners of that capital themselves. In the Third Avenue case there were forty millions of bonds had been put up, and that money paid over in certified checks to this company, and its disposition has been discussed, and argued about and investigated ad nauseam. The Public Service Commission started out with the notion the way to ascertain what a company ought to be capitalized at was to ascertain its value, and the way they thought the value of the company was to be ascertained was to go and ask somebody what he thought about it, and they thought by getting a sufficient number of engineers to pass upon this question the value of the property might be ascertained. What the judgment of people who have been in the property a long time was, was of no consequence to them, and they wanted their expert opinions. I hope I am not doing them an injustice, but I think this was the gist of their theory about that. Everybody discussed the value of a thing, and the value of a thing is what it will produce either immediately or prospectively. That is to say "By their fruits shall ye know them." It is their yield, and that is the measure of all value excepting jewels, and objects of virtue and taste, and so forth. There can be no other ultimate test of value, it seems to me, than the productivity of the thing. You take a railroad, and under one management, it produces nothing, and under another management, it produces 10 per cent, and the value of that railroad is I think better judged by the people who have put their money into it and have been with it for a great many years, than the judgment of any outsider can be, and the judgment in this particular case, the judgment of the people who foreclosed and reorganized the Third Avenue, has been shown by the evidence to be better than that of the Commission who wished to do it in their way. The Third Avenue Company to-day pays interest upon its underlying securities, some ten millions, and four

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per cent upon twenty-two millions of bonds, and five per cent upon eighteen millions of bonds. It has now begun to pay interest at four per cent on its sixteen millions of stock, in addition to that, from its earnings, and put aside for depreciation and contingencies upwards of two millions of dollars. No man on earth would have believed it was a possible thing to do five years ago, and the prices of their securities showed that. That has been done by intelligence and good management, and to some extent by the change in the times. This Committee's justification is in the fact the thing has resulted as it has resulted.

Q. Do you want this Committee to understand that the proceeds — that cash was expended in the construction and development of this system equal to the amount of money which you have mentioned here as represented by different bonds of different varieties, the underlying bonds, and so forth? A. Those figures were made up at one time, and I think the amount of cash that went into the property with the proper commissions, was about that amount.

Q. Wasn't it claimed there was a large amount of watered stock outstanding in the various companies that went into the consolidation? A. Yes, sir.

Q. Was that true? A. I thought at one time it was true. It has not devolved upon me to investigate it, but every time I have looked at it, I have found I was very much mistaken. You take the Union Railway, for instance. I was asked to buy some bonds in it, and there was a millon of bonds issued on the property a great many years ago, and I have spent on that property seven hundred thousand dollars, and those bonds are as good as United States Government bonds. There was, and this is the basis of a great deal of criticism, there was at the time of the electrification of these roads in this city, a great deal of extravagance, but that was before my time, and outside of my knowledge. I only came to know anything about it as I once was thinking of extending the road on some street, and I said, "What is the cost of electrifying this road of mine?" and my engineers all laughed, and they said, "It cost two hundred thousand dollars in Chicago, and a hundred and sixty thousand dollars in Washington, and it cost eighteen hundred thousand dollars somewhere else in this

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city, and I inquired about that further, because that struck me as very extraordinary, and I found that in Forty-second street, for instance, the slot for the electrification was cut out of the solid rock, and as the people up there objected to the noise, they were not allowed to blast, and it was cut with cold chisels, and the cost was tremendous.

Q. I think you stated a moment ago the company either has begun to pay or is about to pay a dividend on common stock? A. It paid a dividend the first of January on sixteen millions of stock.

Q. Does that sixteen millions, in your opinion, represent actual cash invested in the various companies which were brought together? A. Yes, sir; but the amount of cash invested here and there and other places, was the subject of investigation for years during the receivership and during the preceding receivership, and I don't undertake to speak with precision, but I spent eight million dollars on this property, or around about that, myself.

By Chairman Thompson:

Q. There are some of the expenses you call extravagance? A. I said they looked extravagant.

Q. Do you think the cost of these extravagances, as you term them, are legitimate assets that should be taken into account by a Public Service Commission in the matter of capitalization or issuance of bonds? A. No, sir; not in a new company. This happened many years ago, and I think the wise thing to do is, as shown, and the only sane thing to do was to follow the judgment of the people who put their money into it, and their judgment was this was a perfectly reasonable reorganization. These people bought forty million of bonds.

Q. You say their judgment as to the cost of the extravagance was legitimate for taking into account by the Public Service Commission? A. I don't think they thought very much about it. There are people own forty million dollars of bonds and have certain property represents it, and whether the property was originally delivered at too high a price, I don't think they should consider, and they have to deal with the thing that comes before them.

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Q. And they thought the Public Service Commission ought to assume the thing as it was? A. The idea any outsider should come in and say, "Your forty million dollars of bonds are not good, and we are going to cut them in two," we don't think is right.

Q. Your idea is the Public Service Commission should take into account the condition as it was? A. Yes, sir. If you take the subway or anything going on, new, if they find that money is being improperly expended, they should not allow it and should prevent it, but human judgment is very weak and erring. I had a case the other day where I asked the Public Service Commission to allow a certain capitalization on a road I had bought, and among other items of property which I gave them to be considered was a claim for money against the Metropolitan and the New York City Railway Company which I thought was fairly worth somewhere from fifty to a hundred thousand dollars, and the Public Service Commission treated that claim with derision, and I am not sure that they did not think I was corrupt in proposing to capitalize it, but the other day I got an order of the court under that claim.

Q. What Public Service Commission was that, how many years ago? A. Seven or eight years ago.

Q. Do you think that forty million dollars should be taken into account by the Public Service Commission? A. Things that come within their jurisdiction, yes, sir.

Q. You think they should allow it because it had been done? A. Yes, sir.

Q. And not go into the details? A. If you have forty people put a million dollars apiece into the fund you are going to tear some of it up, and whose million are you going to destroy? There is another thing in this business, property is a continuous thing. The Third Avenue was originally a horse railroad, and it was cabled, and then became an electric road, and I have in all the places where electrification is no longer possible, I have a new storage battery car, and there are four creations, the horse-railroad plant is gone; the cable-railroad plant is gone, and what are you going to do, tear up the bonds issued for those properties? These things have all to go in in the end.

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By Mr. Lewis:

Q. The point I had in mind which I would like to have you explain, if you will: How is the public to discriminate between the securities of a reorganized company which issues forty millions of bonds, without the approval of the Public Service Commission, and places those bonds upon the market, and a similar corporation which is authorized by the Public Service Commission to construct a new system and issue forty millions of bonds in payment of the cost of that construction; how are they to discriminate? A. In what particular?

Q. It is fair to assume the people to whom the bonds are issued will list their bonds and offer them for sale on the market, and they have not the certificate of the Public Service Commission behind them, whereas, a new corporation with authority to issue forty millions of bonds, issues those bonds and lists them with the authority of the Public Service Commission, or a certificate from the Public Service Commission that they represent value. A. That is to say that the certificate of a public service corporation put on the certificates increases their value?

Q. Public Service Commission, you mean? A. Yes, as against a property which is similarly organized without that?

Q. It has that tendency, doesn't it? A. That is the Wisconsin theory, and they have a law upon theory, and they think that the stamp "Public Service Commission" on securities is going to make them perfectly good and remove them from all the misadventures and accidents in life, and I think that is an erroneous theory, and I think that the method of discrimination, the property so stamped by the Public Service Commission, and that which is only by the bankers, is shown at once in the price of the security, and I think you take this community here and that the authority and the weight of character which is put upon the securities of the Third Avenue road by the brains of the people who formed the original corporation, is better than the authority of the Public Service Commission would have been. I do not mean to say that it is not conceivable a public service commission may be conceived of and their authority give great additional value to the securities, but I think the Wisconsin theory about it is a pure delusion.

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Q. Are not the people of New York State who are aware of the fact that we have in this State a Public Service Commission and are aware of the fact that under the Public Service Commissions Law it is the duty of the Public Service Commission to supervise capital issues, are the people, the investors, not likely to be misled and to suppose that the issues of a reorganized company put upon the market without the approval of the Public Service Commission, really have that approval because of the existence of the Public Service Commissions Law? A. That would be in the nature of a fraud, if anybody sanctioned any such misrepresentation as that. I do not think the public are likely to be misled. Certainly in this they are not, because in this case we went to the Court of Appeals twice. All of these cases, you know, have to be judged, each one by itself.

Q. Shouldn't there be one rule of universal application to the securities of all public service corporations, and that a rule that as long as we have a Public Service Commission, should not all public service securities be issued with the approval of the Public Service Commission, if we are to have a commission? A. Well, I am not prepared to say that. I should want to go and look at the commission first.

Q. Regardless of the personnel? A. That is exactly what you can't do. You cannot get rid of the human element in any of these things. I just said to you the authority of this reorganization committee was far higher than the authority of the Public Service Commission, in my judgment.

Q. Was the authority of the Public Service Commission any greater than the financial standing and reputation of the men who operating with Mr. Whitney got out the Metropolitan Railway securities? A. I should say there was no comparison between the standing of those two sets of people.

Q. What would have been thought of the standing at that time? A. We are looking back now. Of course we are discussing the power of the committee — asking me what somebody would have thought ten or fifteen years ago is a large question. There were a great many people thought the financiers handling the Metropolitan were the wisest and best, and a great many thought they were scamps.

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Q. Those who thought they were handling it with wisdom and discretion were mistaken, were they not? A. Apparently they were.

Q. And might it not have been just as easy for the people who handled the Third Avenue to have been as much mistaken? A. Yes, sir; but it wasn't.

Q. Isn't it to protect the individual investors against the mistakes of syndicates that are handling the various capital issues? A. Undoubtedly. The object of the Public Service regulation is the noblest and loftiest, to see that everybody gets exactly what he thinks he is going to get, and they impose upon us the regulatory powers of people oftentimes whose opinions are not worth that (Witness snapping his fingers.) The theory of the law is that everybody should be protected, and the practice of the law is occasionally they are and oftentimes they are not.

By Chairman Thompson:

Q. I assume you are in accord with the theory? A. I am pretty near in accord with the theory, but the theory is a regulation theory. Every once in a while I think I have it, and I haven't. That is on account of changes in the law and the personnel. The whole country went crazy on the subject of valuations, and Congress proceeded to value all the railroads of the United States, and got a gentleman of Vermont at the head of the Commission engaged in valuing the railroads of the United States, and to my mind it is the most foolish dream anybody ever dreamed of. If a man can do it, the minute it is finished you have to begin over again, because something has happened to change the valuation, and the object of that was some gentlemen I should call, I suppose, statesmen, evolved that theory for the purpose of fixing rates, and said, "If we know the amount of money which is the value and the amount of capital went in, we could fix the rates." If you have seven railroads running between Chicago and Milwaukee that cost seven different sums, the rate must be the same on each one of them, and that is a mere fact that no theorist is going to allow these arguments, but it is a fact.

Q. This gentleman is Prouty, you refer to? A. Judge Prouty.

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Q. He told us an interesting thing I happened to think of. He told us we could get a better man for ten thousand dollars a year than fifteen thousand dollars a year as Public Service Commissioner; what do you think about it? A. I am not in a position to judge.

Q. He was drawing ten thousand dollars. A. Not only that, but he came from a town where they have no church, no lawyer, no doctor, and no bank.

By Mr. Lewis:

Q. You seem to be pretty well acquainted with him? A. I try to keep informed about people in the country.

Q. What would you say as to the proposition as to whether or not any of the sixteen million dollars of stock was issued in exchange for franchises? A. I don't know anything about it. Years ago the franchises were paid for, and when this law came into effect, it appeared the franchises were not to be paid for.

Q. You mean paid for under the old Cantor Act, do you mean? A. Under the old law, and a man could go and get a franchise and sell it. I think in the Metropolitan investigation a man sold a franchise for over a million dollars.

Chairman Thompson.— You don't mean paid for to the original granting body?

Mr. Whitridge.— No, sir.

Q. There was a time they were? A. There was a certain amount of expense attached to it. Sometimes they were sold at a very large price, and now you turn around and tax it. Our franchises are taxed this year in excess of eight million dollars over last year, and I think it is the most monstrous thing I ever heard of.

By Chairman Thompson:

Q. Why? A. The property is the same as a year ago.

Q. Do you think your railroad has any right in and of itself beyond any other person in the city of New York to the use of the street that it occupies? A. Excepting by reason of the franchise.

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Q. That is a consent? A. Yes, sir.

Q. To use the city's property? A. Yes, sir.

Q. Shouldn't you pay rent for it? A. Sure, but you don't want your rent jumped from year to year eight or ten million dollars.

Q. It would be a real correct theory for you to pay rent to the city for the use of its street? A. I have never objected to that. The franchise tax is an uncertain thing from year to year and the rent would be certain. The principle I do not object to. I object to the administration of a law which permits you to take the same property upon which you paid a tax of a million dollars last year and say the assessment should be increased eight or ten million dollars this year, so you have to pay $150,000 more, and I say that is monstrous.

By Mr. Lewis:

Q. Isn't it because of the increase in the net earnings of the company? A. No, sir, it is because the people who administer the law are a lot of pig-headed ignoramuses.

By Senator Lawson:

Q. Don't you think the State should join in receiving the benefit of your increased profits from the use of the streets? A. Yes, sir.

Q. Why is it monstrous? A. Because I have been to the Court of Appeals twice on that other taxation.

Q. You mean it is monstrous because you don't agree with it? A. No, sir, because it is monstrous.

Q. I wish you would give this Committee the reason why it is monstrous if the State and city should join in receiving a benefit from the advance in the value of the franchise? A. The assessment on this property was made nine or ten years ago. We went into the courts and after nine years' litigation that assessment was cut in half and the tax was finally paid on the reduced assessment. After the tax has been paid on the reduced assessment after a year or two, the tax varies more or less, but I say to come around within three years and jump the assessment any such sum as that is monstrous.

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Q. Nine or ten years ago your railroad was in the process of reorganization; it did not have the earning power or capacity it has today? A. No, sir, but I speak of that as fixing the date of litigation. For the last three years the assessment has been made the tax paid, and suddenly this year I am plunged into litigation.

By Senator Thompson:

Q. I suppose you refer to the Tax Commission? A. It is a board.

Q. Your reference to pig-headed, is that the present Tax Commission? A. Any man that takes a piece of property that this year paid a hundred and fifty thousand dollars, and fixes his figures at $300,000, and without any change in earnings, is pig-headed and an ignoramus.

Q. Which board was that? A. The one there now.

By Senator Lawson:

Q. Did your railroad pay any dividend on the common stock when the assessment was $150,000? A. No, sir.

Q. But it paid the first of January four per cent.? A. One per cent. The assessment is not fixed by what you pay, what you earn.

Q. You cannot pay dividends unless you earn the money? A. No, sir, but you can earn a great deal of money without paying dividends, and I don't think our earnings this year are as large as last, but the variation is very slight.

Q. What is the stock market increase in the stock itself? A. Twenty points. I have forgotten exactly. I think fifty something last year, and don't ask me that. That is like, "Where is the Irishman's flea?"

Q. To sum it up, the question is one of personal opinion between the men running the railroads and the State Board of Tax Commissioners? A. It is not my idea, but I suppose there is no way of preventing people from looking at it in that way.

By Chairman Thompson:

Q. Have you taken into account you might have had better lawyers a year ago than you did this year, or on the other hand,

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the Tax Commission was better advised this time than they were a year ago? A. I have the same lawyers I have had for years, and I have the same state of mind to deal with up there I have had for many years.

Q. If it should turn out to be a fact you had paid less tax last year than you ought to have paid, then you haven't any real quarrel with the Tax Commission this year, have you? A. That is so. I will sit down and write you an apology and have it engrossed and send it to you. I feel very confident in my position.

Q. The tax, the way it has worked out, naturally comes by way of the more profits you make the more taxes you pay? A. Yes, sir. The difference between this year and last and the one preceding that is very slight.

Q. I think a public service corporation like you which exists solely because of a public grant or privilege to operate in a public place should pay the public for that privilege. A. I agree with you.

Q. Based on its value? A. Yes, sir.

Senator Lawson.— And the more you earn, the more you ought to pay for it?

Mr. Whitridge.— Within limits.

By Mr. Lewis:

Q. Do you recall what your assessment is under the new assessment? A. I only remember the increase of eight million. I don't remember the amount.

Q. Have you any idea approximately what it is? A. Really, I have not.

Q. Is the total assessed valuation of the special franchise itself eight million dollars greater this year as shown by the recent assessment, than it was last year? A. That is exactly what I said.

Q. And last year the assessment was substantially the same as the year before? A. Practically. There was a little increase.

Q. And it had been substantially the same for two or three years? A. After the litigation was over that fixed it for a while.

Q. Wasn't it raised considerably after the litigation was over, and before it was reduced? A. I think it was, yes, sir, a little.

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Of course they make the assessment first-off, which is tentative, and then they make the subsequent assessment, as you know, but the final assessment has been raised since the litigation without objection, that is, in some instances.

Q. Wasn't your assessment actually reduced about twenty per cent. along in 1911 or 1912? A. After the litigation, it was.

Q. Wasn't it raised after the litigation and then reduced by the State Tax Commission in office in 1913 and 1914? A. I think it was, and I attributed that to the fact I made a pretty strong statement about it.

Q. Were not all special franchise taxes in New York reduced substantially the same as yours was at the same time? A. I don't know. I devote myself to attending to my own business.

Q. Did you have any information on that subject? A. If I did, it went in one ear and out the other.

By Chairman Thompson:

Q. In order to get your valuation, your valuation is made in conformity to the valuation of your neighbors? A. I suppose so, partially.

Q. Then it would be your business what your neighbors were assessed? A. Not necessarily. I don't run off and ask some one else what they were taxed.

By Senator Lawson:

Q. You would confer as to whether you had been unjustly taxed? A. I confer with my counsel. They talk about it.

By Chairman Thompson:

Q. They are nothing but a question of comparison between the value of your property and your neighbors' anyway?

No answer.

By Mr. Lewis:

Q. Did you ever hear the assessments upon the special franchises of the Consolidated Gas Companies were materially reduced in about 1913? A. I don't remember that.

Q. The special franchises of the Edison Company were very

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materially reduced about the same time upon the same assessment roll? A. I don't remember it.

Q. And both were reduced at the same time yours was? A. I don't remember it.

Q. And the Brooklyn Rapid Transit reduction took place at the same time? A. No, sir, I don't remember it.

Q. Did you ever know of the fact the State Tax Commission of which Mr. Thomas F. Byrnes was chairman scaled down substantially every special franchise, or the assessment upon every special franchise, or the assessment upon every special franchise about 1912 operating in the city of New York? A. I did not.

Q. Substantially 20 per cent.? A. No, sir. If I did it was casual and I have no recollection of it. I don't know the names of the people you mentioned.

Q. Did you ever happen to see a statement to that effect in the newspapers? A. I don't remember that I did.

By Senator Lawson:

Q. Do you read the newspapers? A. Yes, sir, I do. I also write for them.

Q. We have had some witnesses who do not read them and did not care about them? A. I read a great many things I am interested in, and aside from that, I sometimes doubt the accuracy of what I read.

By Mr. Lewis:

Q. You did not contest the special franchise assessment last year? A. No, sir.

Q. Or the year before? A. No, sir.

Q. Or the year before that? A. No, sir.

Q. Did you in 1912, do you recall? A. I think we got the assent of the authorities to meet us on the basis of the litigation for one or two years. I have forgotten how scaled, but I think some arrangement was made. After the decision was rendered I could not find anybody to sit down and take the tax, the money. I supposed it to be such and such a sum, and I went to the Corporation Counsel, and the Comptroller, and various people, and

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I said, "This is what I understand the tax to be, and will you take the money?" and nobody would listen to me, and finally I went in to see Gaynor and he received me with some severity, and he said, "You are a member of the bar?" "Yes, sir," and he said, "What did they make you a receiver of this road for?" I said, "God knows, I don't" and "But what did they put you in this chair for?" and he said, "What can I do for you?" and I said, "I have been wandering around with a million dollars in my pocket, and you can give an order for the Corporation Counsel or whoever is the proper official to sit down with my lawyers and settle this matter," and he said he would, and he did, and the matter was settled within two or three weeks.

Q. You did not contest the assessment of 1915, because you regarded it as satisfactory? A. No, sir.

Q. You did not contest the tax of 1914, for the same reason? A. No, sir.

Q. And for 1913? A. Well, I think there was some adjustment made under the decision. You better ask my counsel about those things. He can tell you precisely, and I cannot.

Q. You were dissatisfied with the tax as recently imposed? A. When I am shown since last year my assessment has grown eight millions, or until that time I am as much dissatisfied as I can be with anything. An eight million increase is too much.

Q. That was fixed by an entirely different body of men last year? A. I don't know that.

Q. That might make a difference? A. I should think it probably would.

Q. If one body of three men determined last year that its valuation was a certain fixed sum and another body of three men coming into office since that determination was made should reach a determination the valuation is eight millions of dollars higher than the amount fixed last year — A. I should be certain the people last year were wise compared with the people this year.

Q. And that because you saved the difference between the tax of last year and the tax of this year, which was the difference of the rate upon eight millions of dollars? A. That would make the argument perfectly solid.

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Q. It is your opinion your special franchises are assessed for more than they are worth this year? A. I think that goes back to the Court of Appeals to say.

Q. The Court of Appeals decision was quite a number of years ago? A. Yes, sir, but the natural growth of things has to be kept in mind, and this I regard is an abnormal jump, and I am so advised.

Q. Was your assessment last year, do you think, based upon the net earnings rule? A. I don't know. For a long time the people up there would not say what it was based upon. I think my counsel at one time threatened them with mandamus proceedings, and they said they couldn't tell what it was based upon.

Q. Isn't it possible they guessed about it at that time? A. Yes, sir.

Q. And isn't it possible there may be a determination and an assessment this year based upon the same theory other than a guess, which brings the result of which you are now complaining? A. All things are possible.

Q. And it is possible you may be just as satisfied to pay the tax without litigation? A. That seems to be one of the least likely things.

By Chairman Thompson:

Q. I think you have a good fight on, and I disagree with you, and I disagree with you about the tax commissioners being pig-headed; I think they are good fighters. A. I do not want to say anything disrespectful about anybody, but it is pretty irritating when you try to do the best you can, to have your tax jumped all over, and you don't know where you are.

By Senator Lawson:

Q. Your statement a little while ago that you wandered around New York city with a million dollars in your pocket and couldn't find anybody with pluck enough to accept it, recalls to my mind a statement which you make in your letter of January 12th to the Chairman of this Committee, in which you make mention of "Mrs. C. and six little C's;" I would like to get your opinion. I want to know whether you, in your opinion, and according to

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the statement in this letter, would have to wander around Albany very far with a million dollars and nobody to take it? A. I haven't said that, but I should doubt very much if I would be allowed to wander with a million dollars in Albany as long as I was in New York.

By Chairman Thompson:

Q. State your facts on which you base that. A. Getting rid of a million dollars in Albany?

Q. Yes. A. Albany is a small place, and money scarcer.

Q. You start out in this letter, and in fact you charge us with being sensational, and at the last end I thought you were trying to be sensational, and I thought it was a good idea to explain that. A. I think those inquiries which you put to the various railroads were in excess of your authority, and I said so.

By Senator Lawson:

Q. You do not think that is within the domain of the legislative power given to this Committee? A. I do not see what interest it can be to the Legislature to know the answer to those facts. I have answered the questions also as fully as I know how.

Q. There is a sort of reference that you have to watch this Legislature, and if there is anybody that has to watch this Legislature on account of these things, I think we ought to know it. A. I don't know of anybody. I have to have these bills read, because things come up there occasionally. Two or three years ago we had a bill about transfers, and all the time bills directed to the railroad, and they never seemed to be of sufficient importance to require any action, except once, and they take their course.

Q. You realize the importance to this Committee in framing amendments to the Public Service Commissions Law, that it is entirely within the domain of the Committee to have information such as was requested by the Committee from you, so as to ascertain with regard to interlocking directorates? A. I do not think it is in the least necessary. Supposing you have interlocking directorates, what of it?

Q. What do you think of interlocking directorates? A. I know there are interlocking directors, and in the nature of things there must be, all over the place.

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Q. Are the directors of your railroad interested in other city railroads? A. I don't know anything about their private affairs. They are very good directors for the Third Avenue, as far as I can see. What other interests they may have, I do not know. While I am here, I have a whole lot of other questions. If I were to sit down and answer the questions you sent me, it would take me a long time.

By Chairman Thompson:

Q. Some of these questions are addressed to a man in your position that you cannot answer, and other questions, for instance, we are not interested in the amount your stock costs, unless somebody gave it to you. We did not want to establish a market value of the securities, stocks and bonds. A. You can ask me any question and I will answer it.

Q. I want to be frank enough to say there are some questions in the second letter we did not mean to ask. What we want to know is largely about the directorate and the interests in corporations. A. Anything you can ask me in reference to the board of directors of my company I will answer you if I can.

Q. If anyone was interested in selling supplies or anything to your railroad, and you being a director and president, and if you were the owner of a concern selling supplies, it might be fair and important to know. A. If I were doing that, I should probably resent inquiry.

Q. And you would know it was a wrong thing to do? A. Yes, sir. For instance, I buy a great quantity of rails, and I am interested as a stockholder in the United States Steel Company, and I buy the rails from the Loraine Steel Company, and I did not know for a long time there was any connection between the two companies.

Q. If the United States Steel Company gave you the stock and you continued to buy rails, the public would be entitled to know it, don't you think? A. If I had anything to do with the Loraine Steel Company.

By Senator Lawson:

Q. How long ago was the occasion on which you talked to Senator C, to vote against a certain proposition? A. It was to

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vote against the Field Code, and it must have been in 1883 or 1884, somewhere along there. It was a good many years ago, and the man is dead.

Q. Have you any opinion as to the procedure in 1883 and the present procedure, as far as Albany is concerned to-day? A. I don't know anything about Albany.

Q. You realize the Commission form of government has progressed to such an extent we now have Public Service Commissions instead of the railroad men going to the Legislature? A. I know, that is the theory.

Q. You know that is a fact? A. I know the Commissions exist.

Q. Would you say the statement in reference to Mrs. C and the six little C's was entirely relevant to what this Committee had in view? A. Yes, sir, justified by a retainer of $250 to the something-or-other Index Publishing Company.

By Chairman Thompson:

Q. Was there anything about the transaction you had with Senator C that in any way gives you any real reason to think there is anything of that kind in the present Legislature? A. I don't know. I should hope that his race was extinct.

Q. Is there anything in this fact, or have you any other facts you can couple with this to make you suspicious of this Legislature? A. I can tell you stories about the Legislature galore.

Q. We are interested, if you have anything in reference to this Legislature. A. I haven't got any at all.

Q. Or any suggestions or anything that makes you suspicious of them, or any member of the Legislature of either house? A. No, sir, I don't know any of them except you here present.

By Senator Lawson:

Q. You deny, so far as you are concerned, with reference to this letter of January 12th, that you know of any such condition, if it exists to-day, with respect to the present basis of things as compared with any condition formerly? A. I have no reason or suspicion to suppose any such condition exists in Albany now as my conversation with Senator C led me to suppose might exist at

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that time. I will go further, and pray that it is not in existence to-day.

Q. We will dispose of the reference to Senator C and Mrs. C and the six little C's as having to do with 1883. A. Yes, sir.

By Chairman Thompson:

Q. How long ago was the talk in reference to the grocer? A. About ten years ago.

Q. Is there anything in that? A. I don't know, the man who told me the story is dead.

Q. Have you any bad stories told you about the Legislature, told to you by anybody that is alive? A. Yes, sir.

Q. What are they? A. Oh, no. Excuse me.

Q. If there is anybody alive that has told you anything about the Legislature, I would like to know them. A. You ought not to know.

Q. Have you anything of recent years, the last four or five years? A. I believe that the condition of things in Albany and everywhere else, financially and otherwise, except politically, has improved in the last ten years.

Q. Except politically? A. Yes, sir.

Q. Your story to this Committee of Mrs. C and the six little C's was of great interest to those at home in Albany, and we wanted to know about it. A. I know nothing about the Legislature in these days, or about Albany, or about anybody there. Occasionally I met people, of course.

Q. You were merely quoting ancient history that might be susceptible to a Regent's examination, or might have been in a Regent's paper, or something else? A. Surely.

Q. I suppose your "stupidity" here on page 2, referred to the Board of Estimate? A. Yes, sir. The Board of Estimate started to give bus franchises all over this town, and one case, 125th street, they proposed to have a direct competition with the Third avenue road, without any public demand or public necessity, and I objected, and run a line of busses through 42d street and Broadway and Seventh avenue, and where the Broadway and Sixth avenue cars come together, and I thought that was stupid. I asked the traffic policeman, "What are you going to do with the

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buses when the Board of Estimate puts them on?" and he says, "Sure, I don't know where there would be room for them on the street."

Q. You are getting tired, aren't you? A. Yes, sir.

Q. I don't like any reference to the present Legislature, that is, I don't like any reference, so far as we are concerned, and I don't know of a member of the Legislature that wants anything suppressed about any member of the Legislature, and I don't know of any, and I think with you that legislators are growing more and more public in what they do so people understand where they stand more and more. A. I think financially and otherwise, except politically, things are improved. I think you have a state of things which makes the United States hide its head.

Q. We won't take any testimony on national conditions.

The Witness.— Scratch that out.

Q. Do you believe in the continuance of the Public Service Commissions? A. The Public Service Commissions I think have got to be judged each one by itself. The Public Service Commission that was appointed by Governor Hughes should have been abolished in ten minutes after its character was known. The Public Service Commission as it is to-day I believe to be a useful body, but I should not wish to pronounce any abstract opinion about those things. They depend upon the personnel. Like any other officer or any other official, do you believe in a permanent postmaster or permanent governor? It depends on who he is.

Q. As long as they protect you against competition and protect you also against unnecessary complaints? A. The Public Service Commissions, I understand were appointed for three purposes. In the first place to see there should be adequate service; second, there should be no such watering of stocks as would swindle the public, and third, the public's complaint should be reasonably attended to.

Q. By reasonably you mean cheaply and expeditiously? A. Yes, sir; but those I think are the main purposes of the Public Service Commissions Act, but when you undertake to broaden out those things and go into all kinds of fads and fancies it is too much.

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Q. And statistics? A. They have tons of statistics might be burned up in ten minutes and do no harm.

Q. If you have anything further you like to say you can do so now or come back any time you wish and make any statement for the record you wish? A. That is a privilege for which I thank you.

Chairman Thompson.— We are much obliged for your presence to-day, and we will now excuse you.

Mr. Whitridge.— I thank you.

ALFRED CRAVEN, being recalled for further examination, testified as follows:

By Mr. Lewis:

Mr. Craven is ready to go along with his examination.

Q. You may proceed. A. As to the possibility of explosions in pipe galleries: In the construction of the Boston subway about the time that galleries were under consideration, there was an explosion under the street, not in a pipe gallery but in construction of the subway under the street, of gas which had combined with air, and formed one of the most powerful explosions that killed fifteen people, and again in the construction of the subway in Philadelphia there was a similar explosion. I don't know how many, but there were several people killed. In Boston a small portion of a pipe gallery, as I understand, had already been built, but it was immediately filled up and abandoned and no pipe galleries in Boston. In New York city the conditions, I think, are worse than anywhere else. There are so many put in the streets, and you can imagine with fourteen or fifteen miles of pipe galleries in New York with gas pipes in them and possibly a leak may occur and through a negligent inspection gas may accumulate and explode, causing a great loss of life, and the personal responsibility for putting the gas galleries in there, if he did it against his conviction, you know where he would be. The Department of Water Supply, Gas and Electricity, Mr. Devaroni was commissioner at that time, and he strenuously opposed putting

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any of the city's pipes in galleries for the simple reason the breaking of a large water main would certainly flood and probably burst the galleries and cause a great deal of damage, and the bursting of a water main would probably cause the breaking of the gas main and short-circuiting of the electric wire in there, which might add to the danger from the water of an explosion of gas, and those things have happened in the streets where there were no galleries, and it appeared one of the most dangerous conditions I think are possible, and I think it would be the worst sort of danger in the streets of New York.

Q. What would you think of the propriety of putting telephone and perhaps telegraph lines in a gallery? A. I think they are better where they are. They are in ducts and each cable has to be in a separate duct, and combination of duct in the street and out of the way and take up only the room of the space they actually occupy in the space in the street, and put the same number of ducts and cables in a gallery and you would have to have a gallery big enough to walk around in and take care of them in, and probably be three or four times as much space.

Senator Lawson.— They would be more accessible in galleries than ducts?

Mr. Craven. — There is no great trouble with cables in ducts in the streets. The trouble where we have explosions in duct manholes, they are generally at the street crossings, and those we would have anyhow, if in galleries.

Senator Lawson. — You say in your opinion they are better where they are?

Mr. Craven.— Yes, sir. They are better where they are.

By Mr. Lewis:

Q. To shift the subject from pipe galleries to something of perhaps equal importance; how large a force have you under you? A. I have now about two thousand employees in my department.

Q. How many of them are engineers? A. Well, a very large percentage of them. I don't know how many. There are a number of clerks, and stenographers, and pages, and things of that kind. I could get that record for you.

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Q. It is not necessary; it is probably seven-eighths or nine-tenths? A. Probably seven or eight per cent. at least.

By Senator Lawson:

Q. How many engineers would you say there are among the two thousand. A. They are all in the engineering department.

Q. Approximately, is there a thousand engineers? A. Yes, sir; more than that.

Q. Twelve hundred? A. Yes, sir; twelve or fifteen hundred, that are rated as engineers. We have our inspection department also in that department, that is, inspectors of material.

Q. Are they rated as engineers? A. Some of them are, but most of them rated as inspectors.

Q. The heads of departments are all engineers? A. Yes, sir. For instance, our inspection department, we are inspecting material all the way from New Orleans, Louisiana, and through the Pittsburgh district, and have inspectors scattered all through that country. They are not engineers.

Q. Are their expenses paid and charged to the city of New York? A. Certain of their expenses are paid. Their traveling expenses are paid.

Q. What would you say those expenses approximate per annum? A. It is all a matter of record, and I can get that for you.

Q. We would like to have that. A. We will furnish it for you. I think you have it already.

Q. We have not the cost of traveling and field work of the inspectors, and to whom charged and by whom paid. A. I can give you a full record of that.

By Mr. Lewis:

Q. How many years have you been chief engineer of the Commission? A. Since 1910-1911.

Q. Tell us something about your organization; there are different bureaus, I suppose, are there not? A. Yes, sir.

Q. Will you give us the important bureaus? A. In the first place the field organization consists of five divisions and a sewer division. There is a division engineer at the head of each

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department, and the department of inspection of material, an engineer at the head of that department, a department of sub-surface structures, who looks out for all sub-surface structures. I have in my department a department of accounting, that has determination of the cost in connection with the dual system, with an engineer at the head of that.

Q. What others are there? A. Those are the principal departments. We have also the bureau of — the electrical bureau is not strictly speaking in my department. He reports to me on certain matters only, the work and equipment of work under the dual system.

Q. Have you a department known as the department of rapid transit? A. No, sir.

Q. Is there such a department under the Public Service Commission? A. I don't know of any.

Q. Mr. Johnson under you? A. No, sir, nothing to do with him at all.

Q. What position does he hold? A. The regular position I cannot recall what his title is.

Q. I notice you smile; is it a smiling matter? A. No, sir; he reports to the Commission on transit conditions generally. That may be the bureau you are looking for. He looks out for the regulation of the street cars and transit generally.

Q. And he is not in your department? A. No, sir.

Q. He is not one of the two thousand? A. No, sir.

Q. Is there another engineering force other than yours? A. The electrical force, under Mr. Wilder.

Q. Is that in addition to the force that is under you? A. That is in addition to the force that is under me.

Q. Have you any knowledge as to how many engineers there are employed there? A. No, sir.

Q. Mr. Wilder is at the head of that? A. Yes, sir.

By Senator Lawson:

Q. Mr. Wilder is under you, is he? A. He only reports to me on certain matters in his department in respect to the construction and equipment of the dual subway system. He has a matter of regulating the equipment of all the street cars, surface railroads and the matters of that kind under his authority.

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Q. Mr. Wilder has that? A. Yes, sir.

Q. Is Mr. Johnson under Mr. Wilder? A. Not that I am aware of. I don't know who he reports to. He has his own separate organization I suppose, I don't know.

Q. Do you know how many men he has under him? A. No, sir, I don't.

By Chairman Thompson:

Q. Is he an engineer? A. Not that I am aware of.

Q. Does he have engineers under him? A. He may have some young engineers help him keep tabs on the transportation matters and regulating the service on the street cars, and so on; I don't know.

By Senator Lawson:

Q. As chief engineer you would know whether he employed engineers under him, wouldn't you? A. No, sir.

Q. You are the chief engineer of the Public Service Commission? A. Yes, sir, but some of the other departments amongst their employees there are men I don't know whether they are rated as engineers or not, but they are as a matter of fact.

By Mr. Lewis:

Q. Are you acquainted with Mr. Johnson at all? A. I have only met him.

Q. Any knowledge of his business or professional ability? A. No, sir, it is a matter I have not concerned myself about in any way.

Q. How long have you known him? A. I was introduced to him when he came on the Commission, I think possibly a year ago.

Q. Haven't any acquaintance with him before that? A. None at all.

By Senator Lawson:

Q. What is the amount of your pay roll of the engineering department? A. I think in 1915 it was about a million and a half dollars.

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Q. A million and a half for two thousand men? A. Yes, sir — two and a half million I should say, about a thousand dollars—

Q. In other words the bulk of the employees of the Public Service Commission of the First District are under your supervision, aren't they? A. Oh, yes, sir.

Q. Is that entirely due to the fact that construction work has been of the largest importance? A. That is the largest work going on, yes, sir.

Q. The regulatory work has been of a minor consideration? A. Yes, sir, as compared with the construction work.

Q. Is there anybody under you has anything to do except with the construction work? A. We have an accounting bureau there keeps an account of all construction and equipment cost of the dual system. They keep account of every cent of money that is expended both by the Commission and by the different companies —by the companies. That is apportioned in a determination I make.

Q. These other people under you are engaged solely in matters of construction? A. Yes, sir.

By Mr. Lewis:

Q. How many stenographers have you in your department? A. Too many details for me to keep in my mind.

Q. A large number, is it? A. Yes, sir, quite a large number.

Q. Several hundred? A. I don't think there are several hundred. There may be one hundred. We have a great deal of stenographic work, not only in the office but in the field, owing to certain requirements of our work that would not appear generally on an engineering job anywhere.

By Senator Lawson:

Q. Do you know the details approximately, or roughly of the work that these one hundred stenographers do; do they duplicate any part of the work? A. No, sir, I don't think they do.

Q. You don't know the details of what they actually do do? A. I know enough of it to be safe in saying they don't duplicate work. For instance, when we let a contract our engineers have to go along the line of that contract and examine every building

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on either side of the street from the basement to the roof. That is done in the presence of a representative of my department, a representative of the contractor, and a representative of the owner, with a stenographer, and they go through that building and make a note of every crack or condition of every room and every part of that building, and that is stenographic work, and all written out and three or four reports made out, and one sent to the owner and one to the contractor and one on our file and one or two other copies made.

Q. These stenographers do field work? A. Yes, sir. Those same stenographers also assist in helping filing various matters in the division office, when they have spare time. In other words, we endeavor to utilize their entire time. That is a condition that I do not suppose ever exists in any other large engineering piece of work, and it is only due to the condition of liability to damaged buildings and the large number of claims of property owners that are always made either against the contractor or against the city. Towards the end of the work we make another examination of the buildings, to protect us against claims.

Q. It is natural to conclude upon the completion of the dual subway work you will have to dispense with a very large number of the engineers and a large number of assistants? A. Yes, sir, a very large number.

Q. Could you approximate? A. Well, I say two years from now our force will be very much reduced, and possibly at that time, it may not be one-third or so more than it is now. It will be reduced very largely. I do not like to commit myself, but it will be reduced very largely.

By Mr. Lewis:

Q. Have you any thought that the construction work of this Commission will ever come to an end in this city? A. That depends upon whether the city will continue to build subways and have money to do it with.

Q. This subway construction work is bound to go on for a great many years, is it not? A. I think it will. As soon as the subways reach a point where they commence to earn money, the amount of money, as I understand it, that has been credited to

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subways becomes available again as soon as it commences to earn money for additional subways, and as soon as money is available, the people will demand it for subways.

Q. The city has issued bonds, and those bonds count against its debt-creating capacity, and when those bonds become sufficiently — when the subway gets to earning money sufficiently to pay the interest and sinking fund charges on those bonds, they cease to be a part of the debt limit? A. Yes, sir, and the city can issue more bonds.

Chairman Thompson.— I have not heard anybody yet give me a real idea that sometimes the city would get a profit out of these subways; you don't suggest any such thing, do you?

Mr. Craven.— Yes, sir, I think they will be earning good money within ten years.

Q. The proposition, as I had it in mind,was to get Mr. Craven's idea of the possibility of relieving the Public Service Commission as such of the supervision of the construction work and the propriety of shifting that back upon the city authorities, and leaving the Public Service Commission to transact a purely public service duty. A. I don't think you ought to ask me that question.

Q. I do not ask for your opinion about it, but I ask you the question as to whether or not the subway construction work was likely to be completed soon? A. The dual system that we have under construction now, at an expense of about $325,000,000, which includes the construction and equipment, ought to be practically completed in two years from now. That is largely completed. There are always some odds and ends drag along and keep a small force, and at that time, I don't know, that is purely a question of policy, whether at that time it should be taken up by a city department or not.

Q. Is there any objection to turning over this construction work to the city right now? A. I do not think it would be good policy, and I think it would create confusion. We have a great deal of confusion anyhow, at times, and any change of that kind would result in confusion.

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Q. That confusion would be likely to be only temporary, would it not? A. We cannot afford to have even temporary confusion. We want to get the subways built.

By Chairman Thompson:

Q. Who do you report to? A. The Public Service Commission.

Q. You do not report to the Secretary or the attorney? A. No, sir. All my reports says to the Commission. The only letters I write to the Secretary are in answer to complaints and things of that kind.

Q. Since last April, you have had two new Commissioners? A. Yes, sir.

Q. And you are likely to have two more soon? A. Yes, sir.

Q. Do you think it would be any different to report to five new men of the city than the four new men here? A. As far as reporting is concerned.

Q. Supposing the city appointed the same five men as a city department, what would be the difference or effect in your work? A. You turn it over to a city department, and they are always more or less inclined to try to make changes in the organization.

Q. You think if the city departments got hold of you, they would make changes in the organization? A They might make changes that would interfere with the organization.

Q. They might cut down your force? A. They might. I don't think they would now.

Q. If you are working along and working properly, you see if you report to the city board you would be responsible right back to the people that vote, wouldn't you? A. You are right about that.

Q. And as it is now, you are not responsible now back to the people that vote; you are responsible to the State, and the voters of the whole State? A. We are only responsible to the State as far as the Commissioners' salaries are concerned.

Q. Your tenure of office depends on the will of the people of the whole State? A. Well, I presume that is so.

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Q. And if you reported to a body appointed by the city government, your tenure of office would depend on the will of the people of the city? A. Yes, sir.

Q. Is there anything in your department that would not stand — that you think would not survive the good will of the people of this city? A. I don't know. I don't think there is anything that should not have their good will.

Q. What were you going to say before I asked you the question? A. Under the Rapid Transit conditions, where the same question came up as to their being — they were entirely independent of the city, you might say, and had their separate department, and the same agitation occurred once or twice, and the Legislature took hold of the matter and made the Mayor and the Comptroller and one of the other people, ex officio members of the Commission, and they took part in all their deliberations, and that helped matters a great deal, because when anything was brought up of importance, they were a party to it, and when it was passed, there was no further delay.

Q. But they did not have a majority control? A. No, sir, they did not have a majority control.

Q. In your judgment, don't you think it would be wise for the city to have representation like that in the councils of the engineering force and the Public Service Commission, that is, so far as it is engaged in construction work all the time? A. Not in the construction work, but in the policy of the Commission and the expenditure of their moneys. Matters are constantly going back and forth between the Commission and the Board of Estimate, and where they do not always work together. They do not always consult together on these matters. The Board of Estimate knows nothing about the things that go to them for approval, and sometimes they stay there a month.

Q. If they were right in the Commission, there would be no criticism of that kind? A. I don't say there would be no delay, because if it still has to go to the Board of Estimate, all of them would not be in the Commission, and they would be objectors probably. Some of them would not be reconciled to what the others did.

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Q. The question is what you need in the construction work that is for the benefit of the city and paid for by the city, whether you ought not to be responsible to the city alone. A. I don't know. We never had any trouble with the Rapid Transit Commission, which had nothing but subway construction work to do.

Q. In reference to that mail business, there is one question that occurs to me tonight. These pipe galleries, you said they could put mail tubes in there? A. Yes, sir; you could put mail tubes in there.

Q. Is there any objection to that? A. No, sir.

Q. As an engineer, what do you say as to the advisability of the city transmitting all the mail it can underground rather than along over the streets? A. A very desirable thing, if it could be done. There was a study of that in reference to putting independent mail tube galleries along the street, and not with the subway construction. That is a study, and the matter would have to be given a great deal of careful consideration.

Q. Could that be done now? A. In some streets it could. They could go on streets where there are no subways, and that might be done, and to a great advantage, and I think it has been considered largely.

Q. Where there are subways, can it be done under the subways? A. Where we have built subways now there is not much room for anything else.

Q. It could have been done very cheaply, couldn't it? A. They went off Broadway with their tubes as much as they could with their mail chutes.

Q. Will you come back in the morning? A. Yes, sir. What time.

Q. Eleven o'clock? A. Yes, sir.

Chairman Thompson.— We will suspend now until 11 o'clock tomorrow morning.

Whereupon, at 4:45 o'clock P. M., an adjournment was taken to 11 o'clock A. M., January 21, 1916.

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JANUARY 21, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Quorum present.

Examination by Mr. Lewis resumed:

Q. When we took our recess yesterday, I think it was you were endeavoring to give us the skeleton of your organization, the organization of the engineering department, and Senator Lawson had some questions which he wanted to ask, and the matter was interrupted. Will you go on now and tell us what you can of the organization of the engineering department and the different bureaus of which it consists? A. I gave all the different bureaus yesterday with the exception of one I failed to mention, and that was the designing bureau.

Q. How many bureaus are there all told? A. There are five divisions in the field; five field divisions.

Q. Of those five field divisions, do they all do the same character of work? A. They all have practically the same character of work, and each has under his charge of construction work, which will amount to in the neighborhood of thirty-five millions of dollars.

Q. Are those laid out in accordance with territorial or geographical lines? A. To some extent they are.

Q. Explain how that division work is distributed, will you? A. Take the first division, they have charge of the work from the Battery up Church street, up Broadway as far as 59th street, and across 59th street to the Williamsburg bridge.

Q. That is one division? A. That is part of that division. He also has charge of the construction of the work on Canal street, from Broadway to the Manhattan bridge, and also charge of a piece of construction on Whitehall street, extending from Church street over to Stone street.

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Q. Who is at the head of that division? A. Mr. Shipman.

Q. How long has he been on the Commission? A. He has been with the rapid transit work ever since it started, in 1900.

Q. Does his division prepare the plans for that work? A. No, sir.

Q. That has only the supervision of construction? A. Yes, sir, the plans are prepared by the designing department.

Q. How many men has he under him? A. December 4, 1915, he had 156 men under his direction.

Q. What were the duties of those particular men? A. They had varied duties, all the way from a page in his office up to his assistant division engineer, who is his right-hand man.

Q. Are those assistants employees out on the work or in the office? A. A certain number on the work and a certain number of them in his office.

Q. Supervising the construction? A. Supervising the construction of the subway.

Q. Checking up, I suppose, to see that everything is done following out the plans? A. And making estimates which have to be returned monthly, and all the general work of an engineering corps in charge of a piece of work of that kind.

Q. Do they keep track of the quantities of material that go into construction? A. Yes, sir, they calculate all the quantities go into construction, and those are turned in regularly in monthly estimates approximately.

Q. What proportion of that 156 is actually engaged in the supervision of the construction as it progresses? A. It would be hard to separate those. I cannot separate those with this information I have here. I think probably seventy-five or eighty per cent. probably are actually in the field work, and I may be wrong about that.

Q. Somewhere around 100 to 125? A. Yes, sir.

Q. How much mileage is embraced within this division? A. I cannot tell you.

Q. Five miles or ten miles? A. Fifty-ninth street, that would be two miles and a half, probably three miles and a half or four miles.

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Q. Construction work under way on all of this distance? A. All of it, yes, sir.

Q. And for about three and a half or four miles, do you say? A. About four miles, I would say.

Q. You have an average of about thirty engineers to the mile? A. Well, I don't like to say that. I would prefer to go to the records and get those things correct.

Q. That is in accordance with your general understanding of the situation? A. I should say possibly that may be right.

Q. Do you think it requires thirty engineers to each mile of construction to properly supervise the work? A. Whatever are on any part of that work are actually necessary and required there.

Q. And whatever is, is right; is that the idea? A. That is my idea of this organization. We have no surplus men laying around and not doing anything, absolutely none.

Q. Do you know of any great corporation that would employ thirty engineers to each mile of construction work under way? A. I don't think the work is in any way comparable. We probably have two or three times as much work on a mile in actual work as on any mile of work built, unless in a city.

Q. Would the New York Central in its underground and station construction work be likely to employ thirty engineers for each mile of construction? A. I don't know whether they would or not.

Q. That would be somewhat similar work under similar conditions? A. No, sir. We have much more to do, being a public force under the public, and the requirements and matters we have to take care of and dealings with the city authorities, with certain construction work that is not done by the men on the work dealing with the city authorities. That is, the city authorities do not do the work, but we have to account to the city authorities for what is going on here to a certain extent.

Q. The work of constructing the New York Central station with continuance of operation and operating conditions, was a pretty difficult piece of work, was it not? A. I think probably the New York Central had probably a very equivalent amount of

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men to the amount we have, but I don't know that. You are asking me something I don't know about.

Q. And do you think they employed an average of thirty engineers to a mile, during the construction of the New York Central station and the underground work there? A. I don't know, I don't know about it. I don't know about it.

Q. Have you any notion whether the State employs any such number of engineers to the mile on the construction of the Barge Canal, for instance? A. I haven't the slightest idea. The Barge Canal is an open ditch out in the country, and there is no comparison between the two.

Q. On the Panama Canal construction did they have any such number of engineers to the mile upon that work? A. I don't know.

Q. Do you know anything about how many engineers were employed to the mile in the Panama work? A. I haven't the slightest idea.

Q. Would it require in your judgment to-day as many engineers to construct the Panama Canal as are now employed by the Public Service Commission? A. I don't think it would.

Q. Was there less need of engineering ability on the Panama Canal than on the subway construction? A. We have many details that are entirely incomparable. The two pieces of work cannot be in any respect compared.

Q. Take your second division, Mr. Craven, how many men — where is that division? A. The second division includes — the second division is under Division Engineer Mr. Myers.

Q. How long has he been employed by the Commission? A. He came on with the original rapid transit work in 1900 and gradually promoted to his present position.

Q. What is the extent of that division? A. Mr. Myers has work from I think, 16th street on Seventh avenue up to 42d street, and he has charge of the work on 42d street, and the Steinway tunnel work, sections 7 and 8 of the Lexington avenue work which extends out somewhere beyond 59th street. I cannot recall where the division line is. I cannot keep the details all in my head. I knew them all at one time. He had charge originally of section 6, and was finally abandoned, and he had charge of the

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line out in Queens, that is, the line to Astoria and the line to Corona in Queens, and in his division is included a small bureau that has charge of the grade crossing work, elimination of grade crossings, on Long Island and Staten Island.

Q. How much mileage has he in his division? A. I cannot judge of the mileage.

Q. Can you tell us how many men he has under him? A. Yes, sir, one hundred and eighty.

Q. Is his mileage greater than the mileage of the first division? A. I think in mileage it is greater. He has a large stretch of elevated railroad work.

Q. Is his work as difficult as the work on the first division? A. Portions of it are very similar.

Q. A considerable portion is less difficult, is it not? A. Yes, sir.

Q. Do you think all of the one hundred and eighty men are necessary on that work? A. I do, sir, every one of them.

Q. Is there as much as six miles of that work under Division Engineer Myers? A. I cannot say, and I do not recall those statements. They are a matter of record, and I can obtain it for you if you would like to have it. I cannot keep those things in my mind.

Q. Where is the third division? A. Under Division Engineer Powers, and commences out on the north end of the second division which is somewhere beyond 59th street, and includes all the Lexington avenue work and the Harlem river crossing and the extension on Mott avenue, and then the elevated road on River avenue and Jerome avenue, and it includes also the east branch of the Lexington avenue road which after it crosses the Harlem river branches, and the east branch crosses 130th street to Southern boulevard, and we have just let the contract for the extension of this out West Chester avenue out to Pelham Park, and also includes the White Plains extension of the present subway from Bronx Park, 180th street to the terminal of that road.

Chairman Thompson.— I have just been subpoenaed to appear before the grand jury at 2 o'clock, and I guess perhaps I will put the letter in the record.

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The letter is as follows:

January 21, 1916.

Hon. George F. Thompson,
Chairman of the Joint Legislative Committee,
165 Broadway, New York, N. Y.

Dear Sir: —

I should like to have the immediate use of all the original records of the Public Service Commission which are in your possession relating to proceedings had by the Commission with regard to the approval of the award of the contract for installing the signal work in the so-called Center street loop. I am informed by Mr. Whitney, Secretary of the Commission, that these original records are in your possession.

I have in mind particularly a letter dated June 15, 1914, of Mr. Williams, President of the New York Municipal Railways Corporation, to the Commission, by which his company approved the bid of the Federal Signal Company. I desire this letter and all other records in this matter, as I have heretofore stated.

I am just informed by Mr. Whitney, Secretary of the Commission, that you have a file containing all the original correspondence and communications with respect to this matter, and that copies of these papers and correspondence appear in the appendix of the answer of Robert C. Wood, filed in answer to charges preferred against him to the Governor last spring.

Yours respectfully,

Edward Swann,
District Attorney.

JO'M.jwl. H.W.F.

Chairman Thompson.— We will now suspend until 3 o'clock, under the circumstances. If you are busy at the office, if you will send your man here I will telephone for you, and I think I will be here at 3 o'clock, but I may be delayed until 3:30, and

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if you will send your man here at 3 o'clock I will have him telephone you and you can come on call and not have to sit around waiting for me.

Whereupon at 1 o'clock P. M., a recess was taken to 3 o'clock P. M.

AFTERNOON SESSION

Chairman Thompson presiding.

At the request of Senator Foley, the following is incorporated in and made a part of the record of the Committee.

Mr. Burr asks leave to have the following extract from the official printed volume of the Report of the Law Department for the year 1911 made a part of the record and calls attention to the report of the case and the enactment of chapter 777, L. 1911.

CITY OF NEW YORK

LAW DEPARTMENT

ANNUAL REPORT

December 31, 1911

Division of Franchises

The most important result accomplished by this division during the year 1911 was the decision of the Court of Appeals in the action brought by the New York Central and Hudson River Railroad Company against the Board of Estimate and Apportionment, to restrain said Board from tearing up the tracks of the railroad on the surface of the streets. This decision was the culmination of the litigation growing out of the opposition of the city to the operation of this railroad on the surface of the streets of the city below Spuyten Duyvil, and particularly below 72d street, such operation having caused the death of several hundred persons and serious injury to many more, not to speak of the depreciation of property along its route.

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The Court of Appeals handed down a decision on the 20th of May, 1911, which, though holding that the railroad company had a perpetual franchise to operate within the city limits, yet clearly enunciated the principle that such operation was subject to regulation under the police power of the State, and that under the exercise of such power as approved by the United States Supreme Court, the company could be compelled to remove its tracks from the surface of the streets at its own expense. This decision was shortly after followed by the passage of an act of the Legislature (chapter 777, Laws of 1911), providing among other things for the discontinuance by this company of the use of the streets at grade and authorizing the city and the company to enter into an arrangement for the elimination of the grade crossings of this railroad within the city limits. That matter is now pending before the Board of Estimate and Apportionment.

The net result of the litigation carried on between the city and the railroad company is that by the decision of the court and the act of the Legislature the railroad company will be required to remove its tracks from the surface of the streets by either elevating or depressing them, and the cost of such relocation of the tracks and elimination of grade crossings must be borne by the company. Such cost it is estimated will be over $50,000,000.

See N. Y. C. & H. R. R. R. Co. v. City, 202 N. Y. 212, aff'g 142 A. D. 578, which holds: "The right of the N. Y. C. & H. R. R. Co. as now exercised to maintain tracks on 10th, 11th and 12th avenue and West street in the city of New York was originally derived from the State, through the Legislature, and not from the city, by a franchise which was not limited in its duration. The Legislature intended that the right should be enjoyed by the successors of the grantee and hence the railroad company is entitled to an injunction restraining the city and its officers from removing or attempting to remove such tracks. *The legislature may, however, so regulate the plaintiff railroad in the streets of the city of New York as to remove the menace and danger to life occasioned by its present operation.*"

Decided May 19, 1911.

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Chapter 777, Laws 1911, being an Act entitled, "An Act to provide for the regulation and improvement of the railroad terminals and approaches thereto, and of the motive power to be used thereon, of the New York Central and Hudson River Railroad Company in the city of New York, and for such purpose, for discontinuing the use at grade by said company of certain streets, avenues, public parks or places in said city, and also for such purpose, to authorize the city of New York to grant real property and rights to said railroad company and to acquire real property and rights from said railroad company."

Became a law July 25, 1911.

LEROY T. HARKNESS, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. Mr. Harkness, did you have anything to do with the injunction suit that was brought by one Williams to restrain the approval of plans? A. Yes, sir.

Q. Did you represent the Public Service Commission in that matter? A. Yes, sir.

Q. Did you participate in any attempt to have the injunction vacated? A. I argued the motion.

Q. Will you tell us what you did in the way of preparation for the argument? A. When the matter first came up, I examined the papers and talked over the general matter with Mr. Coleman and Mr. Semple, and I sent for Mr. Roberts, an assistant in the rapid transit division, and went over with him the question of the approval of the plans and formal resolutions, and I called up Mr. Woody of the New York Municipal, and told him upon looking over the papers, it seemed to me they were identical with papers in the Copeland and Summerville and some other cases, and I wished he would examine them, and if necessary give me an affidavit as to that fact.

Q. Did you move for the vacation of the injunction upon affidavits? A. Yes.

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Q. Whose affidavits? A. I think five or six affidavits. There was an affidavit of Mr. Whitney, the Secretary of the Commission, and affidavits of Mr. Woody, Assistant General Counsel of the New York Municipal, an affidavit of Mr. Menden, Chief Engineer of the New York Municipal, and an affidavit of a man named Partridge, and a man named Marsland, and a man named Potter.

Q. All of them employees of the New York Municipal or the B. R. T.? A. Mr. Woody and Mr. Menden and two of the other three are, and I don't know about the fifth. He states in his affidavit he is a real estate man, I think.

Q. How many affidavits all told? A. I think five.

Q. And of them, three were affidavits of employees of the B. R. T.? A. New York Municipal.

Q. Was there some question raised which led you to make a complaint to District Attorney Cropsey against Mr. Williams? A. Yes, sir.

Q. Will you tell us what that was? A. Mr. Williams in his verified complaint stated he was the owner in fee simple of certain property, and information came to me he was not the owner in fee simple, and that was backed up by affidavits, and I called the matter to the attention of the District Attorney and also to the attention of the court.

Q. Did you make any effort to investigate whether or not the statement in the verified complaint was fully understood and known by Mr. Williams at the time he verified the complaint? A. I had no other means of doing it other than the statement of his counsel, that he had read it to him three times.

Q. Will you state what Mr. Williams was regarded as having perjured himself in regard to? A. He stated he was the owner in fee simple of No. 766 Fulton street, and there was no proof he was owner in fee simple, and his counsel admitted in open court he was not the owner in fee simple.

Q. And did you understand Mr. Williams prepared the complaint himself, or his counsel prepared it? A. I assume in the usual course his counsel prepared it.

Q. Did his counsel lead him into the taking of a false oath by preparing a complaint which contained a false statement, do you

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know? A. I assume his counsel prepared the complaint on information given by his client.

Q. And if he did, and his client was asked if he owned it in fee simple, do you suppose he knew what fee simple meant? A. I think the average man does.

Q. Do you think the average layman knows the difference between a title in fee simple and an equitable title? A. I think the average layman knows the difference between owning a property and not owning it.

Q. And Mr. Williams was in possession of the property, wasn't he? A. Conflicting statements came out on that afterwards.

Q. Will you tell us just what led you to make a complaint to the District Attorney of Kings County against a plaintiff in an action brought for the enforcement of what he understood and was advised by counsel were his rights, for the purpose of having that plaintiff prosecuted criminally on a charge of perjury? A. I thought it was my duty to tell that perjury had been committed.

Q. Do you regard it as your duty as counsel to the Public Service Commission to make criminal complaint against a man who has sued the Commission? A. The fact I did it answers that, I think.

Q. Do you still think it was your duty to do that? A. Yes, sir.

Q. Did you have any other motive in mind, other than the prosecution of a criminal charge, simply and solely because the crime had been committed in your opinion? A. There was that, and of course besides that that was a complete defense to the suit that was instituted.

Q. It was not necessary to prosecute it in the criminal courts, if you had a complete defense civilly, was it? A. Not to defeat the complaint.

Q. You succeeded in getting the injunction vacated, did you not? A. Yes, sir.

Q. And you succeeded in doing that before you made that complaint to the District Attorney, did you not? A. No, sir.

Q. Did the complaint to the District Attorney help you in any way to secure the vacation of the injunction? A. I don't believe so.

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Q. They were entirely separate and distinct, weren't they? A. Yes, sir, one civil and one criminal.

Q. And can you think of any motive which inspired you to complain to the District Attorney? A. None, as I said before, I had reasonable ground to believe perjury was committed.

Q. Have you had reasonable ground to believe anybody else has committed perjury in any matter in which you are connected in the last three months? A. No, sir.

Q. You have known people to testify and to make affidavits frequently in your practice, have you not? A. Yes, sir.

Q. Did you ever know anybody else to testify falsely? A. Of course matters coming before the Commission, and people testifying from recollection might make mistakes, but this was a basic fact, and in a carefully prepared paper.

Q. Did you make any complaint against the counsel who prepared the complaint? A. No, sir; not on that ground.

Q. Did you ask him where he got his information? A. No, sir.

Q. Or whether he had made any investigation to determine the nature of Mr. Williams' title to the property involved? A. No, sir.

Q. And you assumed, did you, that Mr. Williams when he swore that he owned the property in fee simple intended to perjure himself? A. I didn't know anything about the matter of intention. I took the facts as shown, and on the contrary as given in three affidavits.

Q. And you assume that Mr. Williams fully understood the nature of a title in fee simple? A. Not fully understood. I thought he knew the difference between owning property and not owning it.

Q. Did you know that he does not own it? A. The information I have, and from a practical admission of his counsel in open court, upon which he made application to discontinue, he made the admission he was not the owner.

Q. Did you try to find out whether it was an honest mistake on Mr. Williams' part or not? A. Well, from the affidavits I had in my possession I think I would be justified in believing that it was not an honest mistake.

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Q. Did you make any investigation, or did you ask Mr. Williams anything about it? A. I said the affidavits which I had were open to his inspection.

Q. Wouldn't it have been a fair and courteous thing for you to have asked Mr. Williams if he had fully disclosed to his counsel the nature of his title? A. That may be the duty of the District Attorney in investigating it. It was not my duty.

Q. Did you owe any duty to make a complaint to the District Attorney? A. I think I had reasonable ground to believe perjury was committed.

Q. To whom did you owe that duty? A. To myself, if to no one else.

Q. Were you injured if Mr. Williams was guilty of perjury? A. The same as any person who believes a crime has been committed satisfies his conscience.

Q. You had no peculiar personal interest in the matter? A. I never knew Williams or any of his crowd.

Q. What do you mean by his crowd? A. The people around him.

Q. What do you mean by the people around him? A. The people instigating the litigation.

Q. You don't find fault with the instituting of the litigation? A. I did. I thought the process of the court was abused.

Q. Did you call the attention of the court to that? A. The court said it was not necessary. There was nothing left of the case.

Q. Do you regard it as necessary to go to the District Attorney and make a complaint of perjury after having called the attention of the court to the fact there was an abuse of its process? A. I saw the District Attorney before the matter came to the court.

Q. You went to the District Attorney first, didn't you? A. I called the attention of the District Attorney that perjury had been committed, but the court had the abuse of its process in the argument.

Q. Do you understand the Public Service Commission is the creature of the people of the State and you are an employee of the Public Service Commission? A. Yes, sir.

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Q. And it is the duty of you and every other employee to protect the interests of the State. A. Yes, sir.

Q. Do you regard it as a fair compliance with the duty of your position to seek to procure the indictment of an individual on a serious charge as a charge of perjury, without first seeing the man and asking him if he had made a mistake there? A. I think so.

Q. You think it was your duty, do you? A. I think so, on the information I had.

Q. Have you been as diligent heretofore in the performance of your duty in all matters as that? A. I think so.

Q. And you intend to be as diligent hereafter? A. Yes, sir.

Q. And if any man commits perjury in your opinion, you are going to call the District Attorney's attention to it? A. Yes, sir; I think so.

Q. Wasn't that inspired by a feeling of anger because this man commenced an action to maintain what he evidently regarded as his right? A. No, sir.

Q. Not the slightest anger or annoyance? A. No, sir, and I never knew Williams and wouldn't know him if I saw him.

Q. This matter, the commencement of this action, irritated you, did it not? A. No, sir.

Q. Not in any degree? A. No, sir.

Q. Perfectly calm and placid about it, were you? A. As far as that action was concerned.

Q. You knew you had him beaten, because he could not maintain the action, didn't you? A. I knew I could win that motion on three or four different grounds.

Q. And you knew all you had to do was go in before the court and the injunction would be vacated on any one of three or four grounds? A. I thought so.

Q. And before making your application for the injunction to be vacated, and without any malice in your heart or because of anything anybody had done, you actually walked into the office of the District Attorney and sought to procure the indictment of a man for perjury? A. I called the matter to the attention of the District Attorney and said I thought perjury had been committed, and the matter ought to be investigated.

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By Chairman Thompson:

Q. Who passed on the consents for the operation of this road over there? A. I think most of them by me.

Q. You investigated them pretty thoroughly, didn't you? A. Such investigation as I could.

Q. It was up to you to investigate and see the railroad had the majority of consents up there? A. In the greater part.

Q. Did the same fellow sign a consent as a property owner, and didn't you pass upon it? A. I understood he made it out. I don't know whether I passed on it or not.

Q. That one is passed on by some fellow and accepted by the Public Service Commission's counsel as one of the necessary consents for the railroad to make this construction, wasn't it? A. I don't know whether that specific one was or not. He gave a consent, I understand.

Q. It was used by the Public Service Commission? A. I couldn't tell you without an investigation.

Q. If that was in, the fellow's title was good enough to use for the benefit of the railroad to build its structure? A. The investigation may amount to checking the list, and more or less on the face of the papers.

Q. A fellow signed a consent for the construction of the railroad, the railroad people themselves thought he was in good faith about his ownership? A. I presume they did.

Q. Do you think it is fair, where a fellow is in possession of property and he thinks he owns it, and he goes and gives a consent for an operation of a railroad, and it is accepted, and finally some day to his mind that railroad don't build its structure as he understood they were going to, and he goes into court and alleges ownership when he has it, and it is really his equitably, do you think he ought to be prosecuted by a grand jury for a criminal act, is that the way you feel? A. There are two elements you have not in there.

Q. Assuming my question does carry all the elements, what do you say? A. I cannot answer it at all in that way. That does not present the situation. I doubt very much whether he believes

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he has the ownership, and he applied for a release, where it became a matter for him to accept money on the basis of title, and in that he said he did not own the property and it belonged to a man named Slocum.

By Mr. Lewis:

Q. Will you check over the consents to see whether this one was used as a basis? A. I have not the original consents, but I will check what we have.

By Chairman Thompson:

Q. The fellow was all right when helping the railroad out, and pretty bad and ought to be indicted when he wasn't? A. When that consent came in there was no doubt he was not the owner, and afterwards there was.

Q. Another thing is that with your counsel department, which I understand costs about sixty-five thousand dollars a year to maintain, with the best investigation you could make of those things, you never did find out whether he owned it or not? A. We didn't try out the title of each piece of property along the road, and couldn't do it.

By Mr. Lewis:

Q. It was the business of the department to find out whether or not the consents were valid and sufficient in number? A. That is true.

Q. And necessarily involved passing upon those matters, more or less passing upon the form and sufficiency of the consents? A. You couldn't try the title of each piece of property along the line.

Q. It was your duty to do enough to satisfy yourself there was a majority, and in determining that question this man's consent was counted? A. I have not definite information it was counted, but I did satisfy myself on the face of them there was a majority in value in favor of the operation of the road.

Q. And this one was among them? A. I have no recollection of that, and I cannot say from recollection.

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ALFRED CRAVEN, being recalled for further examination, testified as follows:

By Mr. Lewis:

Q. I think you had finished telling us the extent of division No. 2, and were about to take up the extent of division No. 3, when we took our recess; will you tell us what the boundaries of that division are? A. First of all, if you will permit me, division No. 1, I have the details correct. You asked me as to the mileage on this division, and the mileage on this division is 8.7 miles of railroad on division No. 1, and 28.8 miles of single track.

Q. That is, counting single tracks? A. Yes, sir, there are three tracks there, and you add them together. A four-track road a mile long would be four miles of single track. The second division I stopped two sections short on Lexington avenue, and the second division includes in addition to the sections that I enumerated, sections 10 and 11 extending up to 105th street. It included also, as I described, the extension out in Queens, and the Steinway tunnel, and so forth. There are 14.6 miles of city owned railroad.

Q. In section 2? A. Yes, sir, in section 2, and 48.1 miles of single track on the section.

Q. Now, have you any reason to change your testimony as to the number of engineers employed on either of these divisions? A. No, sir, I think I gave the right figure on that. On the first division, I don't know whether this is the same date, this is January 15th, and there are 153 engineers employed.

Q. On the first division? A. Yes, sir. On the second division there are 170.

Q. Passing to the third division, what is the extent of that division? A. The third division, I enumerated the lines properly — no, the sections commencing at the north end of section 11, and I included 10 and 11 on the third division, and I take them out, as they belong to the second, and that description of the trackage is correct. The third division, the mileage of city owned lines is 19.9 miles, including 34.1 miles of single track.

Q. How many engineers are employed on that division? A. May I complete that?

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Q. Yes. A. 19.9 of road of the city owned lines and 34.1 of miles of road of company owned lines. There are 62.1 miles of single track of city owned lines, and 22.8 miles of track of the company owned lines, and that is the actual trackage of the company owned lines is less than the trackage on the road, because some of it is not building.

Q. Do your engineers operate and have any duties to perform in connection with construction work on lines not owned by the city? A. Yes, sir, we have a certain amount of supervision over them all.

Q. And that is the supervision that is reserved under the dual contract? A. Yes, sir, and on all the third track. We keep an accounting in connection with the work.

Q. That you are not required to do by the contract, are you? A. I have to make my determination quarterly, and I do not like to make the determination without I have a fair idea of what I am determining, and it was concluded it was the proper thing for us to keep track of the cost as far as it was in our power to do so.

Q. How many employees did you say you had on the third division? A. On the third division, 165.

Q. What proportion of the third division is actually under construction now? A. All excepting the White Plains — the Westchester Elevated Railroad, the contract has just been let for that. It is all practically under construction.

Q. You will have to increase your engineering force, now that that contract has been awarded? A. We have not, as we have pretty nearly completed some of the other sections, and we transfer the men from one section to another of the work.

Q. What proportion of the first division is completed; any of it? A. Yes, sir; there are two sections of the first division that the railroad construction is practically complete — three sections. That is, from the City Hall park there, from Park place, up to a point near Grand street, including three contract sections. One of them is rather small, at Canal street.

Q. Does it require any force of engineers in the work that has been completed? A. Only in cleaning up some of the work — when I say completed, they are practically completed, so there is

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no maintained force engaged on those now, excepting such as are engaged in closing up the final estimates, that is, the office force.

Q. Is all the work on division No. 1 under contract? A. No, sir. There was one portion of division 1 — there was one section on division 1 I did not enumerate originally, and that is a line we are to build down Nassau street, from the Brooklyn bridge to the lower end of Broad street, and that is not under contract. That connects from the Brooklyn bridge station through Nassau street to connect with a tunnel to go across the river.

Q. That is not under contract? A. No, sir.

Q. Then how many miles of division No. 1 are actually under contract now and not completed; it reduces the eight miles considerably, does it not? A. Yes, sir.

Q. Does it reduce it one-half? A. No, sir; possibly between one-fourth and one-third.

Q. There may be about six miles that are under contract and under supervision of 130 engineers? A. Yes, sir, possibly that much. Now, I wish to say this about the mileage. The mileage is no measure of our work at all; it is absolutely not. It is the cost and value of the work and the difficulties of it that measure our work.

Q. Of course there is a limit to the number of engineers that could be used in any one mile? A. Yes, sir, the average of a mile of track on our whole work is six men per mile. That is true of the entire work.

Q. How many men have you on the fourth division? A. We have no fourth division. That dropped out of existence long ago, and the next division is the sixth division.

Q. Tell us where that is, please. A. The sixth division includes the work of the river tunnel crossing from Whitehall street in Manhattan, to and through Montague street in Brooklyn, and through Willoughby street up to the connection with the present Fourth avenue subway at Flatbush avenue, and includes also Clark street tunnel connecting from Old Slip in Manhattan across the river up under Park street to Fulton street, and under Fulton street to a connection with the present subway near Borough Hall. There is also a short stretch of tunnel, a branch from the Whitehall, connects up Broad street with the Nassau street line I spoke

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of a while ago, and includes also the work on the Fourth avenue subway from 33rd street and Fourth avenue out to the end of the line at 87th street, and also the connection across through the 38th street cut from Fourth avenue in Brooklyn, to the elevated line down to New Utrecht avenue to Coney Island. Also the Gravesend line or Culver line, which starts at that same cut, at 10th avenue and 38th street, and extends to Coney Island. It also includes the 14th cross-town line which will extend from 6th avenue in Manhattan over to the station in Brooklyn, and eventually an extension of an elevated road, or some kind of a road out in East New York. The river portion that crosses under the river from 14th street and Avenue C in Manhattan to, I think it is, Bedford avenue and North 7th street, Brooklyn; that is the eastern district tunnel line.

Senator Lawson.— Has that contract been let from Union Square, including the tunnel?

Mr. Craven.— No, sir, as we endeavored to get the tunnel section under contract first, because it takes longer to build.

Senator Lawson.— You are not working on the contract from Union Square to connect with that?

Mr. Craven.— From 6th avenue and also on the Brooklyn side, up to Bushwick avenue.

Senator Lawson.— Outside of the Long Island Railroad?

Mr. Craven.— Yes, sir; that brings us up to Bushwick avenue.

By Mr. Lewis:

Q. Who is the engineer in charge of that division? A. Mr. Wright.

Q. Did you give me the name of the division engineer of the third division? A. Mr. Powers. Mr. Powers has also been on rapid transit work ever since it started, and so has Mr. Wright.

Q. What other divisions are there? A. Do you want the mileage on that?

Q. Yes. A. On the sixth division, there are 28.2 miles of city owned road, and 26.2 miles of company owned road, making 77.5

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miles of single track on city owned roads, and 57.3 miles of single track on the company owned road.

Chairman Thompson.— I find an invitation to the Committee to attend a reception of the Tammany Club of the 16th Assembly District for to-night, enclosing a ticket to admit all the members of the Committee, also the ladies, and I want to refer it to the sergeant-at-arms, to see if it would be a proper thing for the Committee to go, and if it is, we may all go.

Witness (continuing.)— There are 245 employees on this work. We have to have quite a considerable force on that tunnel work. We have quite a considerable force, on account of their working under air, which makes that difficult work.

Q. What part of the entire division is under construction now? A. It is all under construction excepting the portion of the 14th street line from Sixth avenue to Avenue C in Manhattan, which may be a mile and a quarter, and probably about a mile on the other side of the river, about two miles.

Q. Not yet awarded? A. Not yet awarded. No, there is — that is right.

Q. Now, is that the last division? A. No, sir, there is one other division, the seventh.

Q. Tell us about that, if you will. A. The seventh division is under the direction of Mr. Carpenter, and also one of the original rapid transit engineers, in fact, all of those division engineers have been on rapid transit work since 1900, when the rapid transit commissioners were in existence. The trackage on this division is 14.2 miles of city owned railroad, and 40 miles of single track.

Q. About what part of the city is that? A. The seventh division includes a portion of the so-called 7th avenue extension beginning at the Battery in Manhattan, and going up and connecting with the present subway at the battery, and going up through Greenwich street to Varick street, and up Varick street to where it will intersect Varick street with an extension of 7th avenue south, and up 7th avenue, up to 16th street. There is also a branch from this same road beginning at Chambers street and West Broadway, crossing through Park place to William street, down William

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street to Old Slip, where it will connect with the so-called Park street tunnel, across to Brooklyn.

Q. It does not extend north beyond 14th street? A. Just to 16th street.

By Senator Lawson:

Q. That begins at Chambers street and West Broadway? A. That is a part of it, but we go on down West Broadway to Greenwich street, and down Greenwich street to the Battery.

Q. It does not extend north of Chambers street? A. Yes, sir, up to 16th street.

Q. That spur actually begins at Chambers? A. Yes, sir, and swings off at Chambers street and turns into Park place. On the Brooklyn side we have a line from Flatbush avenue and Atlantic avenue, and that is the end of the present subway, where the present subway is extended out to Eastern Parkway, and out there to Buffalo avenue, and that is all in subway, and there will be an elevated extension from Buffalo avenue to Livonia avenue to New Lots avenue in East New York, and to Nostrand avenue there is also a subway branch that goes through Nostrand avenue to Flatbush avenue. In addition to this, which is all Interborough line, we have a two-track line leaves the present Fourth avenue subway at Fulton street, and goes up St. Felix street under the Atlantic avenue station of the Long Island Railroad, where we will have a transfer station, and then on up Flatbush avenue in connection with construction in connection with the Interborough construction on the same line, and then from the Plaza to Prospect Park West, and go down to Malvern street, and connects with the Brighton Beach line of the B. R. T. There will be six tracks up Flatbush avenue, four of the Interborough, and two of the B. R. T. The four tracks will go out Eastern Parkway for the Interborough and two will be for the B. R. T.

By Mr. Lewis:

Q. What is the mileage of this division? A. Didn't I give you the mileage of this division, 14.2 miles?

Q. Perhaps so, I have forgotten. A. Of city owned road, and forty miles of company owned track.

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Q. How many engineers are employed in this division? A. One hundred and sixty-six.

Q. What is the aggregate, Mr. Craven, of your construction work now, aggregate mileage of all the construction work? A. What I have given you there is one hundred and forty-six miles of city owned railroads and sixty miles of — no, two hundred and six miles of city owned railroad — there is one hundred and forty-six miles of city owned railroad and sixty miles of company owned railroad. There are two hundred and fifty-six miles of city owned trackage and eighty miles of company owned trackage, making a total on the system of three hundred and thirty-six miles of single track.

Q. It frequently happens, does it not, that there are two and three and sometimes four tracks side by side? A. Yes, sir, never less than two.

Q. So the mileage of construction work is very materially less than that? A. In the mileage of construction work I have given in each case.

Q. And for the entire seven divisions how many men are employed as engineers? A. One thousand six hundred and forty-eight engineers, and there are one hundred and seventy-seven stenographers, and clerks, pages, and so forth.

Q. Do you have any inspectors who are not themselves engineers? A. Yes, sir, we have here in addition to this, two hundred and twenty-four inspectors.

Senator Lawson presiding.

Q. Your inspectors are not engineers? A. No, sir. A few of them were, I believe, engineers.

Q. What do you have to say as to the engineering ability of the various engineers under your direction? A. I think we have a very efficient force, sir.

Q. And as efficient as you could obtain? A. I think they are as efficient as we can obtain.

Q. Will you tell us, Mr. Craven, what your theory is of the cave in on 7th avenue last summer? A. I can only repeat the findings of the coroner's jury, that it was due to an excessive blast, which I am thoroughly in accord with.

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Q. You acquiesce in the findings of the coroner's jury, do you? A. I do most decidedly, yes, sir.

Q. Who, in your opinion, was responsible for the excessive blast? A. The people in charge of the blasting under the Fire Department of New York and the Bureau of Combustibles.

Q. Did your engineering force have any part of the responsibility for the excessive blast? A. Not at all.

Q. Was it any part of the duty of the engineers there to see to it that excessive blasts were not permitted? A. No, sir.

Q. It was entirely discretionary with the contractor? A. No, sir; the Bureau of Combustibles have charge of that under licensed blasters.

Q. Did the Bureau of Combustibles have any inspectors or engineers supervising the blasting operation? A. They are supposed to have, yes, sir.

Q. Do you know whether they did have? A. I don't know. That is all in the testimony taken, and I read it over, but I cannot recollect.

Q. Did you make any investigation yourself independently for the purpose of ascertaining the responsibility for the cave-in? A. We did make an investigation.

Q. Who do you mean by "we?" A. The engineers on the work in charge of the work. Mr. Ridgeway, who has charge under me, and my right-hand man in the subway construction work, with the division engineer and the assistants on that part of the work, made a very careful investigation of the whole matter.

Q. Did he make a report of the results of his investigations to you? A. Yes, sir.

Q. In writing? A. Yes, sir.

Q. Is that a part of the documents or records of the department? A. It is, sir.

Q. And did he acquiesce in the conclusions of the coroner's jury? A. I think so, I think he did.

Q. Have you any knowledge as to just what inspectors were nearest the point of the excessive blast when it occurred? A. No, sir, I have not. That is all a matter of record in the investigation and very complete.

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Q. Have you ever had any knowledge as to who was nearest? A. Only in reading over what I saw there, but I cannot recollect what that is. That is a matter of record.

Q. There was an inspector near there, was there? A. I think there was an inspector near there at the time.

Q. An engineering inspector? A. I think one of our inspectors was near there, I cannot recall, Judge. You must not try to tax my memory too much in regard to details. I have too many of them.

Q. I only want what you can remember — I wondered if you had any recollection. A. I read most of the testimony taken before the coroner's jury, and I read the reports made by my assistants. I read them all, but I cannot recollect the details of it.

Senator Lawson.— Do you recollect as part of the testimony that Midnight, the blasting expert, testified that the United Realty Company did not have enough timbers there to shore up that?

Mr. Craven.— Yes, sir, there was a great deal of such testimony as that.

By Senator Lawson:

Q. Where would your inspector come in on the knowledge of the amount of timber that should be there? A. Our inspector was there and that timber was there a great many months, and I think it would be there to-day if not knocked out by the blast.

Q. Did your inspectors' report you have on record agree with Midnight's statement, there was not enough timber there? A. I cannot recollect that.

Q. That was the statement, nevertheless, under oath? A. That was the statement, yes, sir. Judge, I want to be permitted to make a remark about that. There have been several accidents on our work. We have under contract $176,000,000 worth of work to-day. At the time of that accident, we had expended, I think, nearly one hundred million dollars, seventy-five to one hundred million dollars worth of work, and I consider that our work has been freer, considering all the circumstances, from accident than any piece of work of the same magnitude that ever happened. I do not only believe it, but I am positive it is so. You have no

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right to question the efficiency of a piece of work of this kind, on account of one or two accidents.

By Mr. Lewis:

Q. Are you taking any offense at my questions? A. No, sir. I won't say I take offense, but it seems to me your questioning is on the line as to whether our engineering corps was efficient or not.

Q. Isn't it entirely within the jurisdiction of this Committee to ascertain whether you have an efficient organization? A. Yes, sir, and I do not take an exception to it, and I want to make that statement.

Q. I do not object to any statement you care to make, and I am not irritated at any failure on your part, and all I care for is to have the record show such facts as may be ascertainable in connection with the matter? A. I will not keep anything from you that I know.

Q. The one thing that I was leading up to was this; an accident did occur there? A. Yes, sir.

Q. Which cost human life? A. Yes, sir.

Q. And it was avoidable? A. I presume all accidents are avoidable, if you know they are coming in time.

Q. What I mean to say is, either the inspectors or engineers of the Public Service Commission, or the inspectors and engineers of the Bureau of Combustibles should have prevented the occurrence of that accident, should they not? A. I don't know whether they could or not. We are all human, you know, and we are all having a great deal to look out for, and we look at a detail in one minute, and it looks all right, and in an hour from now, something may have happened to disturb the conditions there, and no matter how closely the inspection is, you inspect it again and some little detail has gone wrong, and something may happen.

Q. It is the practice of the Public Service Commission, with its force of engineers and inspectors, to do all that can reasonably be expected of them to prevent accidents, is it not? A. It certainly is.

Q. And it is the practice of the Bureau of Combustibles to do the same? A. Yes, sir.

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Q. The question in my mind, by reason of the divided responsibility was the accident more likely than would have been the case had there been no division of responsibility? A. I hardly think so. The blasting business is taken out of our hands practically by the Bureau of Combustibles. As soon as we do interfere with it we do assume responsibility, and there is where a divided responsibility is not good.

Q. The operations of the Public Service Commission as Rapid Transit Commissioners are essentially operations of city officers, are they not; they are acting as Rapid Transit Commissioners in the employ of the city, and in conduct of a city enterprise, are they not? A. I don't know whether you put it that way or not. I don't think I am a proper one to judge that. That has been decided by the —

Q. The Bureau of Combustibles is certainly a city department? A. Yes, sir.

Q. Would it be better in your opinion or worse to avoid the dual responsibility and the liability of confusion of authority by having all of the work of construction carried on under purely municipal control rather than an element at least of State control involved? A. No, sir, I think not.

Q. You think the present method is better, do you? A. Yes, sir. I will go so far as to say this, that if this work had been inaugurated originally under a city department like the Rapid Transit Commission it might have been the best thing, and it might have been proper. When the dual system of subways was adopted taking in the owners, that is the B. R. T. and the Interborough as co-partners with the city in this construction and it formed an interlocking system, you might say, and there is a great deal done by the regulatory department of the Public Service Commission that helps us that comes into our work. For instance, Dr. Weber's department, the statistician, in our accounting work and the details of it we have to depend largely upon him to check up, and the electrical department under Mr. Wilder who has charge of the inspection of surface railroads and equipment of all railroads and looks at and has charge as to the equipment of all the railroads, which is done by the companies themselves, only, however, with my approval. I have to approve every-

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thing, and I wish I didn't have to, but I have to. That makes an interlocking condition, and if we attempt to separate that, if we turn it over to the city, we have to establish those departments in a certain way, and we would have to have another head of an equipment department and I think it would probably tend to add to the cost rather than diminish it.

Q. It would concentrate responsibility for every detail of the construction? A. That is already concentrated.

Q. There is a division, as far as the blasting goes? A. I don't think there is any way of getting rid of that. We have never been able to get rid of it from the beginning of subway construction.

Q. If you had a Board of Rapid Transit Commissioners appointed by the Mayor in charge of all the construction work and responsible for the supervision and completion of all construction work, that organization would under the theory of concentrated responsibility be responsible for everything, wouldn't it? A. We have it now.

Q. But you have your Bureau of Combustibles that steps in? A. We had that under the Bureau of Rapid Transit Commission and they claimed the responsibility and took it.

Q. A duplication of responsibility? A. No, sir, not a duplication. The blasting business is under the Bureau of Combustibles, and we disclaim responsibility and would not have any responsibility in the matter.

Q. Blasting is a necessary feature in construction work? A. That may be, but the Bureau of Combustibles is responsible for the safety of the city, as far as handling combustibles is concerned, and they are not going to take that out of their hands. Every stick of dynamite goes into the city comes under their direction, and it is brought under their direction to our work and put in the hole under their direction, and blasted and fired by a licensed inspector of that bureau. I don't believe that that could be bettered.

Q. Is that true of the excessive blast? A. Yes, sir.

Q. Then someone is in existence who was licensed and discharged that excessive blast? A. That was the license to blast,

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and the Bureau of Combustibles load these holes and fire that blast.

Senator Lawson. — Do I understand you to say the licensed blaster was in the employ of the Bureau of Combustibles?

Mr. Craven. — Yes, sir.

Senator Lawson. — This man Midnight testified he was in the employ of the contractor.

Mr. Craven. — He became responsible to them.

By Senator Lawson:

Q. He was not an employee of the Bureau of Combustibles? A. He was licensed by them. They do not pay the salary, but they licensed him.

Q. They only licensed him, like the State licenses a chauffeur? A. They are responsible for it, and that is where the responsibility is. What I meant to say, they are acting there under a license of the Bureau of Combustibles and are responsible to the Bureau of Combustibles if they do not do what is right.

By Senator Lewis:

Q. To sum up your views, is it your opinion that the State will necessarily continue in charge of supervision and construction work in the city of New York for the purpose of providing transit facilities for the people of New York? A. Unless they change their laws and change their methods, they will.

Q. Is it desirable to change the law so the State can be relieved of that responsibility? A. I don't think I should be asked that question. That is a question of policy which I think should come from my superior.

Q. I do not want to ask any embarrassing questions; I did not know but that you might have formed an opinion that might be of value to this Committee. A. I had rather not go into that subject. If you ask my opinion of it, I say until this dual system is completed and practically in operation, nothing should be done that would in any way tend to disturb the proper order of things.

Q. I think you testified yesterday that there is not liable to be

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a completion of construction work for a good many years? A. Yes, sir, but there may be some policy within the next two years that may be worked out on the line you speak, that might improve matters, but I don't think the work on this system now should be disturbed in any way, and we are working ourselves to death to try and get this matter in operation.

Q. I am not criticizing or seeking to cast any blame upon anyone. A. I understand that, but we are all working under a strain, with the idea of finishing that, and anything in the way of a transfer or change of administration as you might suggest, that this be turned over to another Board which would have to come in contact and have to adjust itself with the other Boards of the City, the Board of Estimate and those people, I think it would tend to create confusion, and that would not be good for the work.

Q. Would you care to express an opinion as to the wisdom of the act which created the Public Service Commission in the First District and vested that Commission with power and responsibility for the construction of this subway system? A. Do you mean the original Rapid Transit Commission?

Q. No, I am speaking of the Public Service Commissions Law which created the Public Service Commission of the First District and imposed upon it the planning and constructing of the subway system that is now in process of construction? A. I am frank to say I think it would have been better to leave it as it was at that time. There are one or two short matters I would like to speak of. You asked me about the relative cost of this work and compared with the Panama Canal work and the railroad work. It is so entirely different, you cannot make any proper comparison. I find we did look up, as far as we could get from printed records, the cost of administration of the Panama Canal. Up to a year or two ago, it amounted to somewhere near fifteen per cent. The Barge Canal, which has been building, expending a hundred million dollars, for fifteen years, and have not finished it yet, got down to nine or ten per cent. Our work up to date is a little more than six per cent., and it is going down. The Panama Canal work up to 1914, was 12.8 per cent.; the New York State Barge Canal work — including the entire time, is 13 per cent. The

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Board of Water Supply, with their large work of building reservoirs, is nearly 12 per cent., and our work today is a little more than 6 per cent., and the cost is going down. It will come up again, but I think we will get through this work with a cost of probably six or seven per cent., and it is a better record than any engineering work we have been able to find out, and I want that on the record.

Mr. Harkness.— Mr. Craven, does not the Bureau of Combustibles supervise the work of city departments in the same way it does rapid transit work, in the matter of blasting?

Mr. Craven. — It does, to my knowledge. It supervises all blasting operations.

Senator Lawson.— We will suspend until 11 o'clock to-morrow morning, and all witnesses under subpoena will be here and Mr. Craven will appear, if notified.

Whereupon, at 5 o'clock P. M., an adjournment was taken to 11 o'clock A. M., January 22, 1916.

JANUARY 22, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City.

The Committee was called to order, pursuant to adjournment, Chairman Thompson presiding.

Quorum present.

TRAVIS H. WHITNEY, being called for further examination, testified as follows:

By Mr. Smith:

Q. Mr. Whitney, you knew of the action brought by one Fred C. Williams against the Public Service Commission to restrain the approval of certain plans of the railroad company in Brooklyn? A. Yes, sir.

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Q. On a strip of track, elevated structure, to be constructed between what streets. A. The unconstructed portion was from Nostrand avenue to Adam street.

Q. And in that action you made an affidavit? A. I believe there was one filed, yes.

Q. Now, did you prior to the time the original plans for the three elevated tracks between East New York and Nostrand avenue were approved, approved March 20, 1914, these are the original ones, refer these plans to the legal department of the Public Service Commission for an opinion as to whether the type of structure and work to be done was in accordance with the terms of the certificate, the consents of the property owners and the requirements of the franchise and charter of the railroad company? A. I do not recall specifically as to those exact matters. The file will show whether those plans were referred to the counsel or not. It is true that if any resolution adopted by the Commission approving of those plans was drawn by counsel, he would necessarily have to have the papers before him to draw that resolution.

Q. Is it not your absolute duty as Secretary of the Commission to make those references? A. It is my duty to transmit the matters to the departments as directed by the Commission. I undertake to anticipate that in order to get the matters in shape for action by the Commissioners as soon as possible by referring them to the department, unless there is specific reason for bringing some question to them beforehand.

Q. Does that prevent you from answering the question yes or no; is it your absolute duty to refer a proposition of that kind to the legal department of the Commission, as Secretay of the Commission? A. It is my duty to do what the Commissioners direct me to do. I am simply trying to think whether there is any motion in existence which is so broad with respect to my duties that it would include that. My practice is to refer these matters to the department for consideration and report, and in this case the fact the resolution was adopted approving of the plans, it must have been prepared by the counsel.

Q. Why not by the Secretary? A. Resolutions are prepared by the counsel.

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Q. What extra knowledge would the counsel have to have in connection with the preparation of the resolution, other than a statement from the Secretary or some member of the Commission that the resolution was proper? A. To make sure the resolution complies with the provisions of the contracts and certificates.

Q. And it is the duty of counsel to do that, in cases of this particular kind? A. If asked for, yes, sir.

Q. Do you know it was done in this case? A. I can readily tell by looking at the files. My recollection is the Commission adopted the resolution, and the counsel prepared the resolution.

Q. Do you recognize any duty or obligation to refer such matters to the various departments, without specific instructions from the Commission? A. It is my practice to do it.

Q. Do you recognize any duty to do it? A. That is a duty that rests primarily on the Commission, to get expert advice.

Q. Do you recognize any duty on your part to refer these matters to the various departments, without specific action or instruction by the Commission? A. No.

Q. You don't? A. Or general authorization; it is broad enough to include it.

Q. Have you such a general authorization that is broad enough to include it and make it your duty? A. I have from time to time had oral instructions from the Chairman of the Commission when matters came in, to refer them directly to the engineering or legal department, or appropriate departments for their consideration and report.

Q. Have you had any general authorization from the Commission which you recognize as imposing upon you the duty to refer these various matters to various departments as they come before the Commission? A. Yes, sir, under that kind of general instruction.

Q. You recognize that as a sufficient general instruction? A. Yes, sir.

Q. How long has that general instruction existed? A. That kind of a general situation has existed for a number of years.

Q. Back as far as 1912? A. Well, hardly.

Q. What is that? A. Hardly, I don't believe.

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Q. How long back? A. Well, I should say from about that period, because it was the period when the dual contracts were under consideration, and the time of the Commissioners was so completely taken with conferences and negotiations I was told to handle those matters directly, as far as possible.

Q. When the question gets to the counsel of the Commission as to whether or not plans proposed and submitted are in accordance with the charter or certificate and the consents of property owners, is it the duty and practice of the legal department to make a written report; yes or no, as to whether the conditions have been fulfilled? A. Yes, sir. It is the duty of the legal department to report on the legal situation.

Q. On the situation as to whether the charter and certificates and the consents of the property owners have been complied with and fulfilled in the proposed plans? A. Yes, sir. That is a pretty broad question. You take for example, consents of property owners.

Q. We will take that separate first? A. There is no provision of law whereby anybody is charged with the duty of determining whether there is an actual majority of the property owners' consents, other than the court in an action, and the Constitution says, the railroad must have the consents of one-half in value of the property abutting on the route or in lieu thereof the consent of the Appellate Division through Commissioners, and the Railroad Law has a similar provision, and the Rapid Transit Act has a similar provision. There is no provision in any of those laws whereby a street or other railroad must submit to an administrative officer the consents of the property owners to see whether there is a majority. It happened in the case of the dual contracts the Commission provided that they must obtain these various consents as provided for by the Constitution, with the further provision that they must submit the consents of property owners to the Commission for inspection.

Q. For what purpose of inspection, to see what kind of paper it was, or ink, or for what purpose? A. Call the Commissioners that signed the contract, that is what the contract says, shall submit the consents to the Commission for inspection.

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Q. With what object was that put in the law, in your opinion? A. Attempts to safeguard, as far as they might be able, the question whether a majority of the consents were obtained or not, although the finding of the Commission that there was or was not a majority of the property owners' consents could not possibly have any effect upon the question of the legalization of a route.

Q. Why not? A. Apparently under the provision of the Constitution and laws that is a question must be determined by the court.

Q. Would that not put the burden upon the applicant, the railroad company, of satisfying the Commission the men who signed as property owners were such? A. What is that question?

Q. Would that not put the burden upon the applicant, the railroad company, of satisfying the Commission the men who signed as property owners were such? A. What would put the burden upon the railroad company?

Q. When the Commission questioned after an inspection, as to whether or not the signatures were correct and covered property owners in the required amount? A. I really don't know whether it put a burden upon the company or not?

Q. You do not recognize it as a burden to the company to determine this question? A. No. What is involved in your question is a question of whether additional consents are necessary, isn't it?

Q. No. The determination of the propriety of the consents signed. That was my question specifically. A. Propriety?

Q. Yes, as to the propriety of the applicant with those signatures. It would be so, would it not? A. It would put a duty, and if they regarded it as such, a burden, of getting additional consents, if they did not have a majority.

Q. Do you mean to say they would not make a test of the consent they had and would recognize the Commission as far as those consents were concerned? A. Those consents came in and were sent to the legal department. You will have to call some one in that department to see how much inspection was given them.

Q. If the Commission exercised the authority vested in it by

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the law under the rule of inspection of consents of property owners along a proposed route under the dual contract, and the Commission questioned those consents, would it not put the burden of determining whether or not the signatures to the applications were the signatures of property owners or not, upon the applying railroad company? A. I assume if —

Q. Yes or no; never mind assuming; as a matter of fact, would it?

Senator Lawson.— You know whether it would place the burden on the railroad company to determine the genuineness of those signatures?

Mr. Whitney. — When it became a question of litigation in the courts?

Senator Lawson. — Before the Commission?

Mr. Whitney. — No, sir, there is no provision of law or the Constitution for anybody determining the question. It is a matter I have called the attention of the Committee to on several occasions, and to several delegates of the Constitutional Convention this summer. There is a loophole there with respect to the determination as to when a railroad company has got a majority of the consents and at what time it gets the legalization. The Constitution and law says it shall get a majority in value of the property abutting on the railroad, and there is not a word of who shall decide. It is a question of burden of proof, which must come up in court.

By Mr. Smith:

Q. The Commission has to approve the plan for an elevated structure within certain specified territory, does it not? A. Under the dual contract, they reserve the right to approve plans.

Q. If in the exercise of that authority they questioned or demanded of the applicant railroad company that it prove the genuineness of the consents submitted, under the rule of inspection provided for in the dual contract, that would put upon the applying railroad company the burden of that proof, would it not? A. Of sustaining a consent?

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Q. Yes. A. Yes, sir.

Q. And the result of that would be that without any amendment to the Constitution, the Public Service Commission could protect the property along the proposed line of construction? A. How?

Q. By making the railroad company in the first instance prove the genuineness of the consents submitted, isn't that true? A. Of course you understand these are signed and sealed documents.

Q. I don't care about what the character of the documents is; will you please answer the question? A. Of course the difficulty with your questions is that you are dealing with a situation where the Commission has not the legal power to determine whether the consents are sufficient or not.

Q. Will you please answer the question? A. What is the question?

(Question repeated by the stenographer.)

Q. Wouldn't that protect the property owners along the line of the proposed construction? A. I don't know whether it would or not, Mr. Smith. Protect them against what?

Q. Protect them against the possibility of the consents not being either sufficient or genuine? A. There is not any power given to the Commission to do that.

Q. Will you please answer that question? A. That question is just as pertinent to the Commission as to this Committee, to try whether the consents are valid or not.

Q. Now, will you answer? A. Again, the Commission has no power to decide the thing. What is the effect of that question?

Q. (Question repeated by the stenographer.) A. What do you mean by proving the genuineness of the signature? That the document has been properly executed by the person who signed it or the person is not the owner of the property?

Q. We will concede the signed and sealed document of a notary established the genuineness, and we will pass that; now —

Chairman Thompson.— Does the Commission approve those consents?

Mr. Whitney.— No, sir, it has no power to do that. In the contracts there is that particular one provision that they must get

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the consents called for by the Constitution, and really indirectly they do approve of the consents. In the Railroad Law there should be some provision that there should be some officer or some board which should not approve plans unless satisfied they are a bona fide majority of consents —

Senator Lawson.— Your contention is the Public Service Commission acts in a ministerial capacity only?

Mr. Whitney.— I do not say that there is a ministerial duty there.

Senator Lawson.— They do not act as a quasi-judicial body in approving the consents, and you contend they accept them as being valid in a ministerial capacity?

Mr. Whitney.— Among other things, you take a street railroad where there would not be any plans submitted to anybody for an approval, and they get the franchise from the local authorities and go out and get the consents of a majority in value of the property owners abutting on the route, and that is what the law requires, but there is nothing in the law which requires that any public officer or board shall determine whether they have got a majority or not, or the exact moment when they got the legalization, that is to say when they passed the fifty per cent. mark.

Senator Lawson.— Is there nobody to attack the validity of those things?

Mr. Whitney.—The only way is by some kind of property owners' action against the road in the proposed line and the suggestion I made was, it was an undue burden and an uncertain burden to throw on property owners, and there should be some provision in the Railroad Law whereby some officer, the Public Service Commission, or Attorney-General, or Secretary of State, somebody to decide that a company has a majority of the property owners' consents, and in some counties the company does not have to record the consents.

Chairman Thompson.— I have to go, as I have an engagement for 1:30, and Senator Lawson will take the chair and preside.

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By Mr. Smith:

Q. I want to know, and I want you to tell me in answer to my question, if, having the power of refusal of a proposed plan, and the privilege of inspection of consents, if the Public Service Commission is not in a position to protect the public and property owners by demanding that as a condition of the approval of the proposed plans the applicant railroad company must establish to the satisfaction of the Commission that consents are sufficient in number and amount? A. The Commission could use that power of approval of plans as a club for a number of things.

Q. Will you answer the question specifically? A. Including this, I will add to my answer. The Commission, as a practical thing, could use this power to approve plans as a club to require any number of things, including the thing involved in the question asked me.

Senator Lawson.— Including the validity of consents, that has been asked you?

Mr. Whitney.—No, it was asked as to compelling proof of property owners' consents.

Q. Proof of genuineness and validity and number; there is no amendment of the Public Service Commissions Law required as to approval of consents? A. Yes, sir, because there might very well arise a case where you withhold approval of plans for stated reasons which the courts in a mandamus proceeding would say was a reason — was not a proper reason, in so far as it related to the question of whether the plans were proper or not, and would require you to approve the plans, if that was your only stated reason for not approving them.

Q. Wouldn't that raise the question whether or not the power of inspection by the Commission involved and included the authority to determine sufficiency? A. No, sir. We had a case where the Commission denied an application of a company giving a certificate of approval to a railroad company, and the Appellate Division overruled the Commission and directed it to issue the certificate, stating the reason for which it denied the certificate had nothing to do with the merits of the question before it.

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Q. And it was on a question of sufficiency? A. Certificate for approval.

Q. Was the reason given by the Commission the sufficiency of the consent? A. No, sir. Objections to provisions of the franchise.

Q. Was the question on the proposition as to whether the consents were sufficient in amount and number? A. Do you want a yes or no, or the reasons?

Q. Yes or no. A. No, sir. Will it appear upon the record that these questions are being asked upon request of Mr. Carpenter?

Q. No, sir; the questions I am asking are asked by myself. But he may have some interest in the inquiry, and I will concede that on the record, as we all have. Were there a set of plans filed by the railroad company in the matter of the elevated structure between East New York and Nostrand avenue, or any part of it, on or about the 8th day of January, 1916? A. Eighth of January, 1916, East New York and Nostrand avenue?

Q. Between those two points, or any part of it? A. Not that I know of.

Q. Between Nostrand avenue and Cumberland street? A. Not that I know of. You mean on that date?

Q. On or about that date? A. Not that I know of. With the Commission, you said?

Q. That was my question, yes. A. Not that I know of.

Q. Now, were there any plans filed with any department of the Commission? A. I am really not sure about that. There are thousands of detailed plans that come in directly to the engineering department without ever going through the Secretary's office.

Q. Is not the engineering department a part of the Public Service Commission of the First District? A. Yes, sir, and it has custody of its own records.

Q. Would you attempt to evade the issue a paper was filed with the Commission by reason of the fact it was filed in the legal department? A. If that was the exact question, no.

Q. Would you attempt to evade the issue that a paper was filed with the Commission because it was filed with the designing department? A. If that was the exact question involved, no.

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Q. If it was a general question whether the public interest was at stake? A. This assumes knowledge on my part, of course?

Q. It assumes knowledge, yes. A. No.

Q. Would you attempt to evade the issue if a paper was filed with the engineering department? A. No, assuming the question assumes knowledge on my part.

Q. Don't you have in the Commission a plan room, so-called? A. The engineering department has files.

Q. Don't you have in the Commission — don't you have in the Commission a plan room in which maps and plans are kept? A. There are a number of such places.

Q. Then you have at least one? A. Yes, sir.

Q. And the papers on file in these rooms are in the possession and on file with the Commission, are they not, whether you know the particular paper or not; whatever is in that room or those rooms in the shape of plans and maps are on file with the Commission? A. No, sir.

Q. Why not? A. The Public Service Commissions Law says the Secretary shall be custodian of the papers ordered filed.

Q. I ask you about the Commission, and not the Secretary. A. The dual contracts contain provisions that to a certain extent makes the chief engineer of the Commission an independent person, and provides that various kinds of plans shall be submitted to him or filed with him, and they are, and those files that go to the chief engineer under those provisions of the dual contract the Commission or Secretary never see or hear of.

Q. Are they not still on file with the Commission? A. They are on file with the engineer's department.

Q. And is it possible that papers may be filed in one department of the Commission and not be recognized or charged upon the Commission as a whole? A. Yes, sir, in that instance. There are quite a good many instances.

Q. How about that instance? A. Which instance?

Q. The engineering department, as you say? A. That there would be things there that we would not know of?

Q. Yes. A. Yes, sir.

Q. The dual contracts which first created that semi-independent existence were made by the Commission itself? A. Yes, sir.

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Q. Would you recognize it as a possibility that the Commission can avoid a part of its liability or responsibility by making a contract with a railroad company? A. I don't know the meaning of that question.

Q. You claim that the dual contracts create a semi-independent existence on the part of the engineering department? A. Yes, sir, under authorization of the Rapid Transit Act to that effect.

Q. And the contract was between the Commission and the city and the railroad, wasn't it? A. Yes, sir.

Q. Or between the city and the railroad with the Commission's approval? A. Yes.

Q. Under the authority of the Rapid Transit Act? A. Yes, sir.

Q. Do you mean to say that the Commission, so far as it exercises authority or privileges, had the authority or privilege to avoid a part of its legal responsibility by making that character of contract? A. I don't know.

Q. You used that as an excuse? A. All right, suppose I did. You can draw your own conclusion whether I used it as an excuse or not.

Q. You used it as a reason in your testimony? A. If I did, it is in the record.

Q. I am going to ask you if you did not? A. The stenographer can read.

Senator Lawson.— I am going to say for the benefit of Mr. Whitney we are not here to draw any conclusions; what we want is absolute statements of facts for the record.

Mr. Whitney.— You are asking for opinions and not facts.

Senator Lawson.— I wish you would confine yourself to facts, for the purpose of the record.

Mr. Whitney.— Yes.

By Mr. Smith:

Q. We are entitled to opinions from witnesses, too. A. Since when were witnesses required to give opinions?

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Q. Since I asked the last question, if not before. A. It is a new legal doctrine.

Q. I am trying to get at a change, not in the law, but in the rules of the Commission; if a condition exists whereby a department of the Commission can be isolated from its legal responsibility and separated from its legal responsibility by some resolution of the Commission itself, we want to know it, among other things. A. It is a fact the dual contracts provide a great many plans and shop drawings and so on shall be filed with the chief engineer directly.

Q. Which results in the Commission or its subordinates being able, in your opinion, to avoid the responsibility for having control of such plans and documents; is that true or not true? A. No.

Q. So that the responsibility for the control of documents, even in that department still continues as a matter of law with the Commission? A. There is nothing in the proceedings, questions or answers, with regard to documents. I was talking about shop drawings.

Senator Lawson.— Aren't there other papers filed with different departments of which possibly you have no cognizance?

Mr. Whitney.—Yes, sir, a great many matters in the engineering department.

Q. I am talking about general documents; we both know what we are talking about. A. I don't know what you are talking about.

Senator Lawson.— You are not trying very hard to understand, Mr. Whitney, when you make the stenographer repeat the questions.

Mr. Whitney.— The questions are more or less up-side down, and I have to have them read.

Q. So that the responsibility of the control of documents, even in that department, still continues as a matter of law with the Commission? A. No, I don't think so necessarily.

Q. Then, in your opinion, certain documents may escape the control of the Commission by being filed in certain departments of the Commission? A. No, sir.

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Q. Well, now, which way will you have it, that it is possible that there may or that it is not possible that they may? A. That question not only asks for an answer, but a conclusion of me.

Q. Which way will you have it; that documents may escape the control of the Commission by being filed in certain departments, or a certain department, or that documents so filed may not escape the control? A. What do you mean by control?

Q. Legal control, obligations, so far as the Commission is concerned, specific obligation on the part of the Commission? A. There remains a legal control in the office in which the papers are filed.

Q. And legal responsibility? A. Wherever they are filed.

Q. And wherever they are filed means the Commission, does it not? A. Not necessarily. It may mean the chief engineer.

Senator Lawson.— Isn't he a part of the Commission?

Mr. Whitney.— Not under the dual contracts, necessarily. He is an employee of the Commission.

Senator Lawson.— He is just as much a part of the Commission as you are?

Mr. Whitney.— No, sir.

Senator Lawson.— He is not?

Mr. Whitney.— No, sir. Under the Rapid Transit Act and dual contract, he is given a semi-independent position.

Senator Lawson.— There is a hiatus between the Rapid Transit Act and the Public Service Commissions Law?

Mr. Whitney.— Yes, sir, there is a difference.

Q. So far as he exists as a head of a department of the Commission, he has been relieved, and his department has been relieved, of a part of its legal obligation, by the execution of the dual contract or contracts? A. Those contracts are in conformity with the Rapid Transit Act.

Q. That is a matter of opinion which I have not asked you; that is true, is it not, my inquiry? A. Which one?

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Q. (Question repeated by the stenographer.) A. His department has been relieved of legal obligation?

Q. Yes. A. No.

Q. Then he continues when he puts his stamp upon a document, filed in his department, to perform an act of the Commission? A. No.

Q. What does he do then? A. He does not necessarily do anything with shop drawings, for example they are directed by the contracts to be filed with the chief engineer, and he does not necessarily do anything only file them.

Q. Is that small act of filing them a performance by the Commission, in your opinion? A. Not those, no.

Q. Why not? A. Because it is merely a directory provision of the dual contract that the companies should file all the shop drawings, and so forth, with the chief engineer, for purposes of information; this is a conclusion of mine, for purposes of information to us or for examination in case of shop drawing as to accuracy.

Q. Where did the stamp that was used in filing those papers come from? A. Ordinarily it would be bought for him.

Q. By what body in the city of New York? A. Bought by them, the Public Service Commission.

Q. The Public Service Commission? A. Yes, sir.

Q. If he had to re-ink it, who would furnish the ink? A. The Public Service Commission.

Q. Who pays him his salary? A. The city of New York.

Q. Through what authority and body? A. The Public Service Commission.

Q. What does he do in filing a paper of that kind that he don't perform as an employee of the Public Service Commission? A. I don't know.

Q. What did he do in filing a paper of that kind that is not the act of an employee of the Public Service Commission? A. I don't know.

Q. You have no opinion, then, as to whether that act of filing is or is not an act of an employee of the Public Service Commission? A. The actual, manual handling of those plans is done by an employee of the Commission.

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Q. Might you listen to the repetition of the question, so that you can answer it? (Question repeated by the stenographer.) You can answer that yes or no, whether you have or have not. A. I don't believe I have.

Q. When you made the affidavit in the Fred C. Williams action against the Public Service Commission, did you state in words or in substance, "I further state that there is not now pending before the Commission any application by the New York Municipal Railway Corporation for the approval of plans covering the portion of the Fulton street elevated lines from Nostrand avenue to Cumberland street? A. I think I did, yes.

Q. What, in your technical interpretation of words, did you mean by "pending before the Commission"? A. I meant an application submitted for the formal approval by the Commission of plans.

Q. Did you mean that there might not be and was not existing in the legal department a discussion as to plans? A. I simply meant what it said.

Q. Would your meaning include the possibility that there was pending in the legal department of the Commission discussion as to plans? A. What do you mean by discussion of plans?

Q. I don't believe I can answer that question; you know what discussion of plans means? A. I don't. How can you discuss plans?

Q. Well, if you don't know — do you want that to be put upon the record? A. Certainly.

Q. Don't you know how you can discuss plans in the legal department? A. Yes, sir, you can discuss a lot of kinds of plans. Your question does not assume the existence of physical plans, and the physical existence of plans.

Q. Did your affidavit mean that there might not be and was not in the legal department of the Commission a discussion of the plans on Fulton street elevated from Nostrand avenue to Cumberland street, and was not? A. I really don't see — maybe I am mentally off, but I really don't see how an allegation in an affidavit that there is pending no application for approval of plans co-relates with the existence in the legal department of a discussion of plans.

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Senator Lawson.— That would not affect your ability to answer the question, would it?

Mr. Whitney.— It might or might not include possibility of discussion of plans.

Q. You, as a public officer, in that affidavit were informing the court of a condition that did or did not exist in the Public Service Commission? A. Yes, sir.

Q. You were under obligation, whether you recognized it or not, to be not only exact but generous with the court in your statement under those circumstances, so that the court might have as far as possible a knowledge equal with your own on the proposition under discussion? A. Yes, sir.

Q. And not only specific but general and generously; now, having made a statement to that court, I want to know whether or not you dodged the issue by saying it was not before the Commission because it didn't happen to be before you, or before Jones, or before Brown, or before some other specific person whom you might consider the Commission on that particular occasion and on that particular subject now, will you help me get what we need; now, did your statement to the court in that affidavit mean that there was no such application, formal or informal, before the legal department for the approval of plans covering the portion of the Fulton street elevated line from Nostrand avenue to Cumberland street? A. That statement was accurate then, and I still consider it accurate.

Q. What did you mean by it? A. Just what it says, I meant.

Q. Did you include the legal department as a part of the Commission when you made that affidavit? A. Yes.

Q. Did you include the engineering department? A. You are talking about formal approval by the Commission?

Q. You didn't say formal approval. A. It says approval of the Commission.

Q. You didn't say formal? A. Leave out formal. Approval of the Commission, yes.

Q. And that included the engineering department as a part of the Commission? A. On the question of approval by the Commission.

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Senator Lawson.— That is plans before the Commission?

Mr. Whitney.— That is not what the affidavit says.

Q. Did you include the engineering department? A. Yes, in the meaning of the allegation in the affidavit, yes.

Q. Did you have knowledge at the time that you made that affidavit that there were in the engineering department of the Commission plans, or that there was in the engineering department a plan, or a sketch or a profile or a blueprint or by whatever name you wish to call the document or instrument or paper, in relation to this section of land? A. Your question is as to whether there was a plan in the engineering department, and what you are talking about is approval of the Commission.

Q. I am always talking about the specific question I am asking and not letting you go back to the inquiry a half an hour ago and preclude me from making an additional inquiry; please answer my question. A. Those plans had been there a very long time.

Q. Did you have knowledge that there was a set or a single one or a portion of one filed on or about January 8, 1916? A. No, sir.

Q. Did you have information that there was such? A. I understand there was a set of blueprints, but I don't know whether tracings or blueprints sent over to somebody in the engineering department and withdrawn.

Q. That there were such at the time you made this affidavit? A. No.

Q. When you made the affidavit, had you knowledge of the existence of the paper about which you subsequently acquired knowledge or information, would you made the affidavit as you did without informing the court of the existence of that set of plans? A. You are talking about being fair, and you are not fair when you put the word "subsequent" in.

Senator Lawson.— I will have to ask you to refrain from any such statements as that. The Committee is the judge of the fairness of its counsel's questions.

Mr. Whitney.— Pass on that one, then.

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Senator Lawson.— I pass on it as perfectly fair, and I wish a fair answer to it.

Q. If you want to change your statement, so it was prior to signing the affidavit, I will be very much obliged to have you change it that way; which was it, prior or subsequent? A. All I recall in regard to that is I went over that affidavit when I signed it carefully, and discussed the various provisions of it with Mr. Harkness, and was satisfied with respect to the accuracy of that affidavit and signed it.

Q. At the time you had that discussion with Mr. Harkness, had you then knowledge or information in relation to a tracing or drawing about which you spoke in the engineering department, filed January 8, 1916? A. As I recall it, I knew there were some drawings came in. I don't know the exact date they came in.

Q. Recent arrivals? A. Yes, sir.

Q. And was the question brought up in the discussion with Mr. Harkness as to whether or not it would be necessary to disclose the existence of those papers to the court on this application? A. No, sir.

Q. Are those papers there now? A. I believe not.

Q. What were they, that were there? A. I never saw them.

Q. What did you understand that they were? A. That there was a set or duplicate set of drawings sent over.

Q. Would those come within the general expression "plans of construction?" A. I was informed that they did not come within the meaning of plans that required approval by the Commission.

Q. And at the time you made the affidavit? A. No.

Q. Prior? A. Well, that those were either a set or duplicate set of the plans with respect to the structure that did require the approval of the Commission.

Q. And the plans which required the approval of the Commission were already on file? A. There was a set of them, yes.

Q. The set which would require approval by the Commission? A. It had been approved.

Q. Which had been approved? A. Yes, sir.

Q. Why the filing, so far as you know, of the duplicate additional set on or about January 8, 1916? A. I don't know.

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Q. What? A. I don't know. It may have been because they wanted extra sets.

Q. Do you know that they are the same or different? A. Than what?

Q. Than the set requiring the approval of the Commission already on file with the Commission, and which had been approved by the Commission? A. I don't know whether they were identical or not.

Q. Was the discussion as to whether they came within the exact meaning of plans for approval, was that had in relation to the preparation of this affidavit? A. I had inquired and been informed that all of the plans necessary to be approved by the Commission in respect of the structure from Nostrand avenue to Cumberland street had been approved in the resolution of the Commission adopted in October. I asked about that specifically.

Q. And that there was nothing then pending? A. There was nothing that would require approval by the Commission additional to what had been given in so far as it related to the approval of plans.

Q. Was your inquiry on that subject made in relation to and on the subject matter of the preparation of this affidavit which you made? A. No, sir; it was made prior to that.

Q. How long prior? A. Within two or three days, and other preceding times.

Q. The 8th of January was the time of the filing; the 13th of January was the time of signing the affidavit? A. The 8th was the date of filing what?

Q. This new additional unnecessary set. A. I don't know when they came in, the exact date.

Q. If you had inquired more than five days prior, the condition in the engineering department had changed possibly in relation to that subject; at the time you inquired if there was anything pending requiring the approval of the Commission, was that the time that you were informed or understood, or acquired knowledge or information that there was a duplicate set which had lately come into the office? A. Does your inquiry go to the question of whether that duplicate set required the act of physical approval on it?

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Q. No, I think I made it pretty plain, and tried to cover all the points so it would not have to be dodged or repeated. A. Repeat it, then.

Q. Do you want the question repeated? A. Yes, sir, please.

Q. (Question repeated.) A. Do you want that answered yes or no?

Q. Answer it any way you please. A. There are about three questions in it. The question I had asked in reference to the plans was a complete inquiry as to whether the Commission had approved all the plans necessary to be approved by the Commission for that stretch of elevated, and I was told they had, and that would exclude the possibility of any additional plans requiring approval unless the Commission should direct that they should prepare different plans.

Q. Was that the time you got knowledge of this additional set? A. No, sir, that was prior.

Q. How long after you made that inquiry did you get knowledge or information in relation to this additional set? A. I discussed this particular matter a number of times with the engineers and with Mr. Harkness.

Q. This additional set a number of times? A. No, sir, the subject matter.

Q. I am talking about specifically the additional set; was that the time you got knowledge or information with regard to that? A. I got knowledge of that, I don't know just when — some time prior to that time.

Q. Prior to January 13th? A. Yes, sir.

Q. And in discussing the subject of making this affidavit in this litigation, or your affidavit? A. It may have been.

Q. Was it or was it not; it is only a few days ago? A. The chances are that it was, because they brought me the form of that affidavit late one evening, just as I was leaving the office.

Q. And you were then informed that this affidavit could properly be prepared for submission to the court in that litigation? A. Yes.

Q. And that it was not within the requirements to approve the duplicate additional subsequent sets, as you call them? A. By the Commission, yes.

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Q. By anybody? A. No, sir, it was not necessary for anybody to approve them. They are identifiable by their numbers.

Q. Do the original files show that the approval or endorsement of the chief engineer is on them? A. I don't believe it is. It is not essential. I don't believe it is on them.

Q. Are the plans which require approval by the Commission filed with the Commission? A. They are either in my office or I have sent them to the chief engineer's department; I don't know which.

Q. They are filed with the Commission? A. Yes, sir.

Q. And where are they kept? A. I should say they are kept in the engineering department.

Q. Is it customary or proper for executed plans and files of the Commission to pass beyond the control of the Commission or away from its department? A. No, sir.

Q. Neither customary or proper? A. No, sir; except when they are required by the Committee.

Q. When were those January 8th papers or drawings withdrawn from the engineering department? A. I am not sure. It was prior to that date.

Q. Prior to the date you made the affidavit? A. I believe so, yes, sir.

Q. How do you know? A. I am so informed, that is all.

Q. By whom? A. Mr. Harkness.

Q. What would Mr. Harkness know, as a matter of fact? A. He had probably inquired about it.

Q. Could they be withdrawn without the direction of some member or officer of the Commission? A. Well, they could not be withdrawn without the knowledge of some officer of the Commission.

Q. What officer had knowledge and gave the permission to withdraw them? A. I don't know. They were in the engineering department. It must have been some officer of the engineering department.

Q. Is it the custom to permit the withdrawal of filed papers? A. It is a custom to permit very frequently the withdrawal of plans.

Q. Why? A. For correction generally.

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Q. That means that the withdrawn paper is returned to the files of the Commission sometime? A. Not —

Q. That the corrected paper is returned to the files? A. No, not necessarily. It might never be submitted again.

Q. Then that would not be an instance of corrrection? A. Not a mere correction.

Q. In the case of correction, that means the papers are returned ultimately to the Commission and its control? A. Or to the engineer.

Q. What were these withdrawn for? A. I have been told they were withdrawn because they did not require any approval.

Q. Was it an alteration of the original plans which the company under its construction authority had permission to carry out without the act of the Commission? A. Without any further approval of the Commission than of the plans that had been approved.

Q. That is the fact, is it? A. I am so told.

Q. When you were told that you certainly acquired some information that these drawings were not duplicates of the ones which did receive the approval? A. I was not informed very definitely just what those plans were, other than plans did not require the approval of the Commission. I tried to say a set of plans or duplicate set; I wasn't sure which, a while ago.

Q. You did not mean to inform the Committee your understanding was it was a duplicate set? A. Not necessarily an exact duplicate set. It might have been plans more in detail, or something of that kind.

Q. Do you know what those details were? A. No, sir.

Q. Or any of them? A. No, sir, I can't say that I do.

Q. Have you got any information as to what any of them were? A. Other than that they were plans or more detailed plans with respect to that stretch of elevated which did not require approval in view of the fact the Commission in October had approved the numbered plans.

Q. Have you any information as to what the details were, the railroad company first filed plans and withdrew them because their plan as filed did not require approval in view of a prior approval of some prior plan? A. I don't know what they were.

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Q. None of the details or none of the changes? A. No, sir.

Q. Did you have any discussion with anybody in which they suggested or told you what any of those changes or alterations were? A. No, sir.

Q. Had no information or knowledge on the subject? A. No, sir, other than as stated.

Q. You did not state very definitely one way or the other? A. No, sir, I didn't.

Q. Will you go on and specify on the subject of those January 8th plans? A. I cannot.

Q. But so far as you know they varied from the October plans? A. I don't know how they vary, or whether they vary.

Q. An application for privilege to remove would naturally come from the railroad company. A. I should think so, yes, sir.

Q. Did any such application come to or through you as Secretary of the Commission? A. No, sir, the plans had not come to me, and no application to withdraw them had consequently come to me.

Senator Lawson.— Who would naturally receive such an application, the engineers or some other official?

Mr. Whitney.— If they were the detail plans, shop drawings, or some such thing, they would go to the engineering department and request made to the officer or officers with whom the matters were filed. If it was a formal matter before the Commission, the request for withdrawal would come to the Secretary.

Q. If it was such a document as you understand this was, or such a drawing or plan, where would that request go? A. To the office or officer where filed.

Q. And that would be, in this instance, the chief engineer of the Commission? A. Or one of his subordinates. I don't know that this went directly to the office of the chief engineer, and probably to the office of one of his subordinates.

Q. How low in the scale of subordinates would the officer have authority to take out of the files of the Commission papers or instruments filed with him? A. I don't know how far down the line of the subordinates the chief engineer has given authority on

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a matter of that kind. It would depend, to a considerable extent, on the exact matter, I should say.

Q. Is there any record kept of withdrawals of papers, maps and instruments of that kind? A. I don't know. You are talking about the engineering department?

Q. Yes. A. I don't know.

Q. There is none kept in your department as Secretary? A. There would be written papers to show a matter had come in and had been withdrawn.

Q. Would you require a receipt for the map or paper? A. Or letter asking for permission to withdraw it, or letter of transmission returning it.

Q. Is that a rule of the Commission generally controlling the Commission and its subordinates? A. No, sir, a rule of my office.

Q. Do you believe such a rule should exist in the office of the engineering department? A. I think there should be a registry of everything coming in, and likewise of withdrawals.

Senator Lawson.—We will suspend now until Monday at 11 o'clock.

Whereupon, at 2 o'clock P. M., an adjournment was taken to Monday, January 24, 1916, at 11 o'clock A. M., at the same place.

JANUARY 24, 1916

NEW YORK COUNTY LAWYERS' ASSOCIATION BOARD ROOM,
165 Broadway, New York City

Meeting called to order by Senator Robert R. Lawson, Acting Chairman, at 11 A. M.

Quorum present.

Committee took a brief recess.

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Committee reconvened at 12:30 P. M.

ANDREW E. KALBACH, being duly sworn, testified as follows:

Examination by J. Frank Smith, Counsel:

Q. Your full name is Andrew E. Kalbach? A. It is.

Q. And you reside where? A. 2211 Andrews avenue, borough of the Bronx.

Q. How long have you lived there? A. About three years.

Q. Where did you live prior to that time? A. At 184th street and Grand avenue in the borough of the Bronx. I forget the number.

Q. And lived there for how long? A. Approximately two years.

Q. And prior to that time, immediately prior? A. At Aqueduct avenue and Kingsbridge road, borough of the Bronx.

Q. For how long a time? A. Approximately two years.

Q. And immediately prior to that? A. At 135th street and Riverside drive, for approximately one year.

Q. And immediately prior to that? I want to carry your residence for about ten years. A. Kingsbridge road and Morris avenue.

Q. Is that in the borough of Bronx? A. Yes.

Q. How long did you live all together in the borough of the Bronx? A. For eleven years with the exception of one year, when I lived in Manhattan.

Q. Were you a resident of the city of New York before that? A. Yes, for a year I was a resident of the borough of Brooklyn.

Q. And that is your only prior residence in the city? A. Yes.

Q. Where did you formerly live? A. I formerly was an officer in the navy.

Q. Were you during the period of your residence in the borough of the Bronx — did you become familiar with a number of its residents? A. Yes.

Q. You became familiar with the name, personality and number of its residents? A. Yes, of a number of them.

Q. Among those did you know Mr. Ex-Commissioner Wood? A. Yes.

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Q. How long have you known him? A. I have known him since 1905.

Q. That is during the entire period of your residence there? A. Yes, sir, practically.

Q. And where did he live when you first knew him? A. I don't know. I understood he lived in Riverdale. That is merely hearsay.

Q. Where is that? A. Riverdale forms the northwest corner of the Bronx.

Q. So that is in the Bronx? A. Yes.

Q. Were you ever at his residence during that period? A. No, sir.

Q. And from whom did you understand that he resided at that former place? A. Why, he lived with his mother, I believe.

Q. I say, from whom did you get your knowledge? A. I don't recall.

Q. And the place that you describe is the residence of his mother, as you understand it? A. As I understand it, yes. It is merely a matter of recollection.

Chairman Thompson.— You are familiar with the place?

Mr. Kalbach.— No, sir.

Chairman Thompson.— Ever been there?

Mr. Kalbach.— No, sir.

Chairman Thompson.— What is your business?

Mr. Kalbach.— At present I am Deputy Commissioner in the Department of Street Cleaning, in charge of the department in the borough of Bronx.

Chairman Thompson.— Have been for how long?

Mr. Kalbach.— Two years.

Chairman Thompson.— Prior to that, what was your business?

Mr. Kalbach.— Prior to that I was in the railroad business.

Chairman Thompson.— In what connection and with what road?

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Mr. Kalbach.— In charge of the construction and operation of the New York City Interborough Railway Company.

Chairman Thompson.— How long were you with them?

Mr. Kalbach.— From 1905 until 1913.

Chairman Thompson.— Eight years?

Mr. Kalbach.— Yes.

Chairman Thompson.— That is up to the time of your appointment as Commissioner?

Mr. Kalbach.— No. There was one year between my appointment as Deputy Commissioner of Street Cleaning.

By Chairman Thompson:

Q. Mr. Wood was connected with that company, was he not, in some capacity? A. He was.

Q. In what capacity? A. I understand that he was the promoter of the railroad and before the railroad was under construction, I think he was the president of the company. For a while he was also a director of the company. I forget the number of years.

Q. During its construction or after the construction was completed? A. While the construction was in progress.

Q. What did you say was the position you occupied with the City Interborough Railway Company? A. I was the engineer in charge of the construction of its line, and later when the road was placed in operation, as its manager as well.

Q. And what position did you occupy in the navy? A. I resigned as a lieutenant.

By Mr. Smith:

Q. Where did you obtain your engineering education? A. At the Naval Academy, Annapolis.

Q. How many years did you have there? A. I entered the Naval Academy in 1892 and graduated in 1896.

Q. You immediately entered upon your service in the navy? A. Yes.

Q. Continued there until when? A. 1904.

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Q. Through whom did you receive your place or position with the City Interborough Railway Company? A. I first was employed by the Rapid Transit Subway Construction Company for the electrical equipment of the subway in 1904, and the following year I was selected for the position in the Bronx construction of the New York City Interborough Railway Company.

Q. By whom selected? A. I wouldn't say by whom I was selected.

Q. The president of the City Interborough Railway Company is whom? A. The president of the Railway Company at that time was Mr. Alfred Skitt.

Q. Where does he reside? A. You mean at that time? He had resided in Yonkers.

Q. Were you personally acquainted with him at the time you received your appointment? A. I don't remember that I was.

Q. Were there other persons or person with whom you were acquainted who were connected with the Railway Company at the time of your appointment? A. I was more closely acquainted with Mr. E. B. Burge, of the Rapid Transit Company, than I was with Mr. Skitt. I was also acquainted with Mr. L. B. Stillwell, who was electrical director.

Q. This Mr. Skitt that you mentioned, was he identified with the Manhattan Elevated Railway Company? A. Yes, he was vice-president. I believe I received this position without personal influence, if that is the point you wish to arrive at.

Q. Did you know Mr. Wood, former Commissioner Wood, at the time of your selection? A. No, sir.

Q. And for how long a period after you were selected before you became acquainted with him? A. Immediately upon my selection.

Q. And what was the nature of your relation with Mr. Wood at the time of your early acquaintance? A. I had no positive dealings with Mr. Wood. I acted entirely under the instructions of the president of the company, and practically the only dealings we had with Mr. Wood was to go over the routes with him as they had been laid out.

Q. Did you become more intimately acquainted with him as time passed? A. I did not.

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Q. Have you ever been intimately acquainted with him? A. No, sir.

Q. Ever had any social dealings with him? A. No, sir.

Q. Visited back and forth in the families? A. No, sir.

Q. Any social or political relations? A. No, sir.

By Chairman Thompson:

Q. Have you taken any interest in politics over there? A. No.

Q. No interest at all? A. I am not a member of any political organization.

Q. Do you have to be a member in order to become interested? A. No, sir. It has not been necessary in my case.

Q. You hold a position now? A. Yes.

Q. How did you get that? A. Well, I got that through the personal influence of people that I might meet.

Q. That is the city position that you now hold? A. Yes.

Q. I don't like to be personal, Mr. Kalbach. Now, we are making an investigation, and it is necessary at times to ask questions that may seem somewhat personal. Now, I would like to know who recommended your appointment? A. Is it necessary that I state that?

Q. Why, I don't know until after you state it. A. Well, if I say a personal friend recommended me, would that answer?

Q. I would like to know who that personal friend was. A. It was Mr. George B. Mullen who recommended me personally.

Q. Did you have any other recommendations? A. None that I sought.

Q. Did you have any? A. Not that I know of.

Q. Mr. Mullen is the Mayor's law partner, is he not? A. Yes, sir.

Q. His recommendation I wouldn't think would hurt you a bit. I would be very glad to have him think well of me. A. That is the reason I gave you his name.

By Mr. Smith:

Q. There came a time when, to your knowledge, Mr. Wood was to receive or about to receive an appointment as a Public Service Commissioner, was there not? That is, there came a time, when,

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to your knowledge, Mr. Wood received or was about to receive an appointment as a Public Service Commissioner? A. No, I didn't know that. The first I knew of his being a Public Service Commissioner was when I saw the announcement in the paper.

Q. Did you know that he was an applicant for the position prior to appointment? A. I did not.

Q. Did you have any knowledge of Commissioner Wood prior to his appointment as Public Service Commissioner, except his connection with the New York City Interborough Railway Company? A. No, sir.

Q. He, as the promoter of that railroad, and subsequently its president and director of it, never came into the public print, I suppose? A. I suppose it did, but I don't recall having seen it.

Q. Did you know of his name having come into print in connection with any other matter in the Bronx except the New York City Interborough Railway? A. No.

Q. Did you know whether or not he was also interested in politics? A. Merely as a matter of hearsay, I understood that he was a member of the Democratic organization.

Q. And what was your knowledge of the exercise of his influence in the district of the Bronx in which he resided? Did you have any? A. No, sir.

Q. You had never heard to what extent he took part in his party's politics to help make the party successful? A. No, sir. I understand he was honorary vice-president, if I recall properly, honorary vice-president of one of the Democratic clubs up there.

Q. To your knowledge? A. Not to my knowledge. That is hearsay.

Q. As a matter of common knowledge, you know of it as a supposed fact in the community? It was discussed? A. No. I don't know that it was.

Q. Did you ever hear that Mr. Wood interested himself in politics up in the district? A. I must have, since I have that recollection.

Q. You have heard of it? A. Whether the fact that I was building a railroad up there didn't bring it to my attention any quicker.

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Q. And do you remember of Commissioner Wood's property, or some property that he owned in the Bronx, being the subject of an inquiry on account of the number of tenants they had at about election time? A. No, sir.

Q. Or the fact that there had been what is commonly called colonization? A. No, sir.

Q. That is non-residents for the purpose of increasing the vote in his district? A. No, sir.

Q. Never heard of that? A. No, sir.

Q. Have you any knowledge of the inquiry by the grand jury into that? A. No, sir.

Q. Did you ever have any financial dealings with Commissioner Wood? A. None whatever.

Q. You didn't receive your salary or compensation through or directly from him? A. No, sir.

Q. And you say that you never heard Commissioner Wood's name, or ex-Commissioner Wood's name discussed as a candidate or applicant for the position of Public Service Commissioner? A. No, sir.

Q. Did you ever have occasion to handle any fund or sum of money on account of a creation of a Public Service Commissioner in the First District of the city of New York? A. No, sir.

Q. Received none which was used? A. No, sir.

Q. For that purpose? A. No, sir.

Q. And paid out none? A. No, sir.

By Chairman Thompson:

Q. You say you took tours of routes with Wood, when you went over this line? A. Yes.

Q. How long ago was that? A. It was early in 1905.

Q. How many times? A. Possibly twice.

Q. Did you get pretty well acquainted with him then? A. No, sir.

Q. Did you see him after that? A. Yes. I saw him now and then.

Q. What do you mean by that? A. I couldn't say the number of times.

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Q. Well, once a week? A. Maybe I saw him once a week covering a period of time. He would drive up there while the road was under construction.

Q. During the time the road was under construction? A. Yes.

Q. Then after the road got in operation, did you see him? A. I don't recall how many times I saw him.

Q. Well, how often did you see him? A. I may have seen him once or twice a year.

Q. Where would you meet him? A. Meet him on the railway somewhere.

Q. The railway was in process of construction? A. I met him then also.

Q. Did you meet him at any of the clubs up there? A. No, sir. He recently joined the Fordham Club, of which I am a member, but he was not a member of that club during the period you mention.

Q. You say after the road was constructed and down to the present time that you met him probably once or twice a year? A. I should say so.

Q. When did you see him last? A. I saw him last at the dinner at the Fordham Club.

Q. How long ago? A. About a month ago.

Q. How long before that did you see him? A. I have seen him on the street a few times, not to talk to him.

Q. How long before that did you see him to talk with him? A. I don't recall. I think I saw him in the office of the Third Avenue Railway Company once.

Q. When? A. In 1912.

Q. What was the business then? A. I don't know.

Q. What time of the year was that? A. I don't recall.

Q. Might that have been early in 1913? A. No, sir.

Q. Sure it was 1912? A. Yes, sir.

Q. How do you fix your recollection? A. Because during the year 1912 the lines of the City Interborough were operated by the Third Avenue Railway Company, and during that time I was assistant general manager of the Third Avenue Railway Company, and that is how I fix the date.

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Q. What was the subject of the conversation? A. I don't know.

Q. Did you ever hear of Wood being before the grand jury on account of a colonization matter in reference to that house in Riverdale? A. No, sir. If it will help you, I will say on the record that I have had no personal dealings with Mr. Wood at all.

Q. Have you had any relations with anybody else where Wood was the subject, either directly or indirectly in relation to this? A. No, sir.

Q. Were you interested in the campaign up there at one time to elect a judge? A. No, sir.

Q. Do you know that Wood had any interest in that? A. No, sir.

Q. You don't know anything about Wood's activity in relation to an election some few years ago? A. I do not.

Q. Don't know anything about it? A. No.

Q. Do you know anything directly or indirectly which occurred between either you or Wood or with you or anybody else, in the way of conversation or anything in reference to Wood's appointment as a Public Service Commissioner? A. No, sir.

Q. Nothing? A. No.

Q. With nobody? A. Nobody.

Q. You had no conversation with any officials of the railway company about Wood's appointment? A. No, sir. I had no connection with the railway company when Wood was appointed, I think.

Q. Now, when did your activity with the railway company cease? A. December 31, 1912.

Q. And were you friendly with the railway company when you quit? A. Yes.

Q. Did you continue on friendly terms with the railway company after that? A. Yes.

Q. Ever have any conferences with them after that? A. No.

Q. Any of their officers? A. No, sir.

Q. You say the last time you talked with him was at that club dinner? A. Yes.

Q. And the last time you recall before that was when you went into the Third avenue office in 1912? A. Yes.

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Q. Can you call to mind the conversation of the Fordham Club? A. I think he spoke to me about the death of Andrew Freedman.

Q. What did he say about it? A. I don't recall what he did say about it. I remember saying to him that I didn't know Andrew Freedman.

Q. What did he say about Andrew Freedman? A. I think he said, if I recall correctly, "Isn't it too bad about the death of Andrew Freedman."

Q. He assumed you knew Andrew Freedman pretty well? A. I think he did.

Q. Did he say anything further about it? A. No, sir. We didn't have a lengthy conversation.

Q. Have you any idea why he mentioned that to you particularly? A. No, I don't know. It was merely as a matter of conversation.

Q. Did you talk with him about anything else? A. No, sir. I think I said something else to him about the investigation of this Committee.

Q. What was the talk? A. I think I said to him that he was having a pretty hard time before the Investigating Committee.

Q. What did he say? A. I don't remember that he made any answer. I left him then, I think.

Q. He didn't make any answer that would indicate whether he was having a hard time or not? A. No.

Q. Any further conversation? A. No, sir.

Q. Now do you mind giving the conversation that you had in that Third avenue office? A. If I recall he said he had a device for connecting electrical wires and asked me what I thought of it.

Q. What did you tell him? A. I told him I thought it was very good.

Q. Is that all the conversation? A. Yes, sir.

Q. Do you know of the judges or magistrates up in the Bronx? A. Yes, I do.

Q. Who do you know? A. I know Judge Tierney. I have met Judge Shied. I don't know him as well as I do Judge Tierney.

Q. Any others? A. I have met Judge Morris. I don't know him as well.

Q. Do you know Judge Koenig? A. No, sir.

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Q. Never met him? A. No, sir.

Q. How well do you know Judge Tierney? A. Well, I don't know that I could consider him as a personal friend. I have met him many times, principally at the Fordham Club.

Q. Did you see him in 1912? A. I don't recall that I did. I possibly did see him during 1912.

Q. Did you see him in 1913? A. I must have.

Q. In the winter and spring? A. I don't remember what time of the year.

Q. Do you know a gentleman up there by the name of Murphy? A. Yes.

Q. How well do you know him? A. I don't know him as well as I know Judge Tierney.

Q. How long have you known Mr. Murphy? A. Possibly seven or eight years.

Q. And how often do you see him, Mr. Kalbach? A. I see very little of him.

Q. Well, do you see him eight or ten times a year? A. No, I think not. I don't think I have had a conversation with him more than three or four times.

Q. A year? A. No, three or four times. I have met him that many times.

Q. You meet Judge Tierney more often than that? A. Yes.

Q. How often do you see him? A. That's very hard to say. I see him occasionally at the Fordham Club.

Q. Do you see him anywhere else? A. Not that I recall.

Q. Do you ever remember talking with him about politics? A. No, sir.

Q. Never talked politics? A. No, sir.

Q. Maybe you don't regard Public Service Commissions as politics? A. Never talked that at all.

Q. You mean about Robert C. Wood? A. About public service matters.

Q. You never talked to him about Wood? A. No.

Q. Never met him with Wood? A. No.

Q. You never had any information about that at all? A. No.

Q. Now I wish, Mr. Kalbach, we have tried to ask you in detail, now if there is anything you know about Mr. Wood if you will tell

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this Committee, we shall be very glad to hear you. A. I think you have covered the ground quite thoroughly.

Q. When did you see Judge Tierney? A. I think I met him the last time at the Fordham Club. Now I would like to say that after it had been decided that I was to build the lines of the Bronx, Mr. Wood took me over these lines twice, I think, and then later on I met him during the construction period, principally on the line of construction. He may have come to my attention a few times during the early days of the construction of the line, but I don't even recall that.

By Mr. Smith:

Q. Mr. Kalbach, after you retired from the railway connection in December, 1912, did your immediate following occupation involve you being the custodian of or the messenger in the receipt and delivery of any considerable sums of money? A. No.

Q. At any time subsequent tc your retirement from the railway company, not immediately connected with your own private business? A. No, sir.

Q. The same information is desirable in regard to property or securities other than cash money? A. None whatever.

By Chairman Thompson:

Q. When did you see Judge Tierney last? A. The last time I saw Judge Tierney was at the Fordham Club.

Q. How long ago? A. I should say about a month ago. It was at a dinner given in his honor. I shook hands with him, that's all.

Q. How long before that did you see him? A. Probably a month before that.

Q. Where? A. At the Fordham Club.

Q. Did you talk with him? A. I think I was going out and he was coming in.

Q. How long before that did you see him? A. I don't remember.

Chairman Thompson.— Any more questions?

Mr. Kalbach.— I think I never saw Judge Tierney alone, if that is what you mean.

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Q. Mr. Kalbach, I don't want to be nasty or mean. Personally I try to be nice, but have you any objections to our accountant taking an inspection of your bank account? A. None whatever.

Q. And will you be willing to have our accountant, Mr. Perley Morse, do that? A. Yes, sir.

By Senator Lawson:

Q. In the early part of 1913, did you ever discuss with Judge Tierney or have you ever heard of any discussion that Judge Tierney had relative to the appointment of some one as a Public Service Commissioner, either by Wood or anybody else? A. I don't recollect so.

Q. Now, how frequently did you meet Judge Tierney during the early part of 1913? A. That's very difficult for me to say.

Q. Would you meet him down on the street around through the neighborhood? A. No. The only time I ever saw him was at the Fordham Club in company with others.

Q. You understood, of course, that Judge Tierney was of some political influence in the Bronx? A. Yes.

Q. Did you ever know of him to recommend residents of the Bronx for various appointments? A. I knew he recommended men for work on the railroads.

Q. Know of anything beyond that? A. I have seen in the papers that he was an endorser of Mr. Wood, that's the first I knew of it.

Q. Did Judge Tierney ever discuss in any manner or form with you the prospective appointment of Robert Colgate Wood or anyone else? A. No, sir. He did not.

Q. Did he ever discuss any appointment with you? A. No, sir.

Q. Did any other man of the same position of prominence in the Bronx, irrespective of who he might be, discuss with you the appointment of a Public Service Commissioner or any other political appointment? A. No, sir.

Q. Anybody in Manhattan? A. No, sir.

Q. Did you know Governor Glynn? A. No.

Q. You know he was Governor of the State? A. Yes.

Q. Did you ever go to Albany? A. Yes. I have been in Albany.

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Q. Did you ever meet Governor Glynn? A. No, sir.

Q. Do you know any of the banks up in Albany? A. No.

Q. You know there are trust companies, up there? A. I know there are.

Q. Do you know any of the officials connected with the banks or trust companies in Albany? A. No, sir.

Q. Never had any conversation either in Albany or over the long distance wire with any financiers at Albany? A. No.

Q. Now, is there anything that you think that might be of interest to this Committee, that in the scope of our examination you have not had an opportunity to explain? A. I think not.

Q. If there is any statement you would like to make, as a citizen that you think would benefit this Committee, we would be very glad to have it. You are at liberty to make such a statement. A. I might state in order to explain my position with the company. I was an engineer building the line. I had nothing to do with the financial regulation at all.

By Chairman Thompson:

Q. Did you ever come in contact with the Public Service Commissioners in relation to the railway? A. Yes. All the time I was building the line.

Q. Did you know the Commissioners? A. Yes. I met all of the last board.

Q. And they frequently had matters under consideration that affected your road, didn't they? A. Yes.

Q. And consequently affected you as superintendent of the operating department? A. Yes.

Q. And you kept yourself in contact with them as much as possible, that is you kept yourself informed and so forth about the Public Service Commission members, and you knew the Commissioners? And did you keep yourself informed as to their personality, possibly their political affiliations and so forth? A. Only so far as it affected my position.

Q. Don't you think it became necessary for a man to understand perfectly the men who were the Public Service Commissioners? A. I never made a study of any of them.

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Q. I don't think my questions contemplate that. What I mean is that you have to understand the men. Don't you think you want to understand who they are appointed by, where and who they are going to be and be friendly with them? Did you stop to think of that or didn't you? A. No.

Q. Well, when a man's term was about to expire didn't you keep yourself interested as to who his possible successor would be? A. Yes.

Q. You took cognizance of that? A. Yes.

Q. And when you left the railroad in 1912 you knew whose term was going to expire the following February, didn't you? A. I don't know that it left any impression on my mind.

Q. You knew there would be an appointment? A. No.

Q. Didn't you know they made appointments every February 1st? A. Yes, I probably knew that.

Q. And did you not interest yourself in that far enough to get an idea of who would be likely to be appointed, what sort of a man he was, and so forth? A. I don't recollect that I took any great interest in it.

Q. May I ask your politics? A. I am a Democrat. Independent Democrat.

Q. What is the difference between a Democrat and an Independent Democrat? A. One doesn't belong to the organization.

Q. What is the organization? A. The organization is commonly known as Tammany Hall.

Q. That's down on 14th street; and what is the organization in the Bronx? A. The same thing.

Q. Who is the leader up there? A. Arthur Murphy is county chairman.

Q. He is the leader, too? A. He was the leader. I think he is not now.

Q. Besides leaders there, do they have others in the organization in the Bronx? A. Yes, I suppose they do. There are Republican leaders up there also.

By Chairman Thompson:

Q. I mean these Democrats. Are there other district leaders? A. I don't believe I can name them all.

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Q. Well, don't you know any of the district leaders up there? A. Well, I know Mr. William T. Bergman.

Q. Who else? A. I don't know of anybody, that is, commonly speaking.

Q. I presume Judge Tierney is an organization man? A. Yes.

Q. Consults with Murphy? A. I don't know.

Q. With Arthur Murphy, I mean. A. I don't know of my own knowledge.

Q. Don't you know any of the other leaders up there? A. Well, I know Mr. Michael Garvin.

By Senator Lawson:

Q. Is Robert C. Wood one of the organization? A. I don't know how active he was.

Q. Was he once an organization man? A. Yes, sir.

Q. Did you know any of the comptrollers of the city of New York? A. No, sir.

Q. You know the present comptroller by name? A. Yes.

Q. Did you know any of the others by name? A. Well, I knew of Mr. Grout.

Q. Did you know Mr. Metz? A. Yes, I knew of him but I didn't know him personally. I knew he was comptroller.

By Chairman Thompson:

Q. Can you explain to me how you, an Independent Democrat, was so well acquainted with all these organizations up there? A. I think the business in operating the railway brought me into considerable contact with these people, asking me to put men to work on the road over which I had charge.

Q. All of these men you have named? A. Yes.

Q. How often? A. That is very hard to say. It may be once a month and maybe once a week.

Q. Did you put the men to work? A. I did when they looked all right. I put them to work if I needed a man.

Q. How many men did you place on the job, put on the work at the request of Judge Tierney? A. That's very hard for me to say, sir. Maybe there were twelve, maybe there were forty.

Q. How many at the request of Mr. Murphy? A. I would say the same about him.

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Q. How about Mr. Bergman? A. Not any.

Q. How many at the request of Mr. Wood? A. I don't remember that I put any men on operating the railroad for Mr. Wood. During the construction period he asked me to put some night watchmen on.

Q. Did you do that? A. Yes.

Q. What else did you do for Mr. Wood? A. Nothing else that I remember.

Q. These watchmen were men that most anybody recommended, any cripple or individual. You don't have to have a man for night watchman that is peculiarly fitted for the position. A. No.

Q. You don't even inquire as to whether that man stays awake at night? A. Why we require him to stay awake at night.

Q. Well, you don't inquire or examine as to whether he has ability to do that? A. Yes, we do.

By Chairman Thompson:

Q. I guess that's all. A. I was not a director of the company and I was both manager and engineer of the railway and had no financial interest in the railway company in any way.

Q. So far as you know Mr. Murphy or any of these gentlemen you have named, were they financially interested? A. I don't know.

Q. Did you have any interest? A. No, sir.

Q. Would that statement of your interest apply to other city railways in the city of New York at that time? A. Yes, sir.

Q. Then will you kindly give Mr. Smith, our counsel, as soon as we adjourn, the names of your banks? A. I will be glad to do so.

Chairman Thompson.— We will now adjourn until Thursday morning, January 27th, at 11 o'clock A. M.

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